



2024: DHC: 3395



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Reserved on : 2nd February, 2024**
Pronounced on: 30th April, 2024
+ **W.P.C 8788/2014 AND CM APPL. No.47504/2022**

FOOD CORPORATION OF INDIA Petitioner
Through: **Mr.Manoj, Standing Counsel for**
FCI and Ms.Aparna Sinha,
Advocate

versus

UNION OF INDIA & ORS. Respondents
Through: **Mr.Vikram Jetly, CGSC with**
Ms.Shreya Jetly, Advocate for R-
R-1 and R-2.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

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

“(a) Issue a writ of certiorari or other similar or other appropriate writ, order or direction, quashing the letter/orders dated 24.6.2014, 25.9.2014 and 16.10.2014 issued by the Respondent No.2;

(b) Pending the hearing and final disposal of this Writ Petition, interim orders may be passed to restrain the Respondents from taking any step to give effect and/or future effect to the abovementioned letter/orders dated 24.6.2014, 25.9.2014 and 16.10.2014 issued by the Respondent No.2;



*C Pass ex-parte ad interim orders in terms of prayers above;
and
(d) Pass any other or future order(s) as this Hon'ble Court
may be deemed fit and proper in the facts and circumstances
of the case."*

FACTUAL MATRIX

2. The petitioner, i.e., Food Corporation of India ("petitioner FCI" hereinafter) is a legal entity established on 14th January, 1965, under Section 3 of the Food Corporation Act, 1964 with the aim to fulfill the objectives of food policy and is controlled by the Ministry of Consumer Affairs, Food and Public Distribution and wholly owned by the Union of India. The respondent no.4 ("respondent Union" hereinafter) is the Union of 'canteen employees' employed with the petitioner FCI.

3. In the year 1984, several employees of departmental canteens approached the Hon'ble Supreme Court, by way of Writ Petitions No. 16081/1984, 16082/1984 and 11211/1985, seeking the relief of equal pay allowances and service benefits at par with the central government employees stating that they are entitled to be treated at par with the civil post holders in the central government, in view of notifications dated 1st October, 1979 and 11th December, 1979.

4. Thereafter, the Hon'ble Supreme Court of India *vide* its order dated 30th August, 1993 directed the Central Government to refer the industrial dispute under Section 10(1)(d) of the Industrial Disputes Act, 1947 ("the Act" hereinafter) for adjudication.

5. Pursuant to the above, the Ministry of Labour *vide* order dated 14th December, 1993 referred the said industrial dispute I.D No. 3/94 and



32/94 to the learned Central Government Industrial Tribunal (“CGIT” hereinafter) for adjudication under the following terms:

“Whether the demands of the Canteen Mazdoor Sabha to treat all members of the Union at par with other general civil servants and in the Central Govt. of India and also grant them the same status and benefits w.e.f 1.10.1979 is legal and justified? If so, to what relief the concerned employees are entitled to and from what date”

6. In the year 1998, the respondent Union filed a Writ Petition (Civil) bearing No.45689/1998 before this Court seeking *inter alia* implementation of 5th Pay Commission Report wherein this Court, *vide* order dated 20th September, 1999, directed the learned CGIT to dispose of the industrial dispute expeditiously.

7. Thereafter, the learned CGIT passed an Award (“CGIT Award” hereinafter) dated 6th March, 2000, holding that both the classes i.e., general and canteen employees are distinct and the discrimination alleged by the respondent Union could not be proved, and that the canteen employees are not entitled to the grant of pay scale allowances and service benefits under the principle of equal pay for equal work. However, it further opined that due to the departmental canteen employees and the FCI canteen employees represented by the respondent union performing duties of similar nature, the respondent Union is entitled to grant of pay scale allowances and service benefits at par with the Central Government departmental canteen employees.

8. Subsequently, the management of petitioner FCI *vide* its 275th Board of Directors meeting dated 18th August, 2000, in addition to revising the pay, allowances and various other benefits for the employees



represented by the respondent Union also implemented the directions issued in terms of the CGIT Award.

9. During the pendency of the W.P.C No.45689/1998, the petitioner FCI *vide* letter dated 18th September, 2000, informed its zonal managers of the revised pay, allowances and other benefits being extended to the employees of its departmental canteen/tiffin rooms. In view of the above said letter and bearing in mind the implementation of the CGIT Award, this Court *vide* order dated 26th March, 2001 disposed of the above said writ petition.

10. In the year 2001, the respondent Union, being aggrieved by the non-implementation of the CGIT Award in full, initiated contempt proceedings under Section 11 and 12 of the Contempt of Court Act before this Court in CCP No.368 of 2001, which came to be dismissed *vide* order dated 2nd May, 2005.

11. Thereafter in the year 2007, the petitioner FCI *vide* letter dated 5th March, 2007, intimated to the respondent no.2 i.e., Regional Labour Commissioner (Central) ("RLC" hereinafter) that the industrial dispute has been resolved by issuance of aforementioned letters dated 18th September, 2000 and 15th December, 2005.

12. Further, being aggrieved by the non-grant of complete pay scale and allowance as per Government CCS Rules, the respondent Union filed an application under Section 10(2) of I.D Act before the learned RLC for referral of the industrial dispute before the Board of Conciliation.

13. Pursuant to the above, the learned RLC served the petitioner FCI with a notice dated 18th September, 2006, informing the petitioner FCI to



attend the conciliation proceedings for possibility of an amicable settlement.

14. In the year 2008, the petitioner FCI was served with a show-cause notice dated 12th August, 2008, seeking an explanation for non-implementation of the CGIT Award and as to why proceedings under Section 29 of the I.D Act may not be initiated against it. Thereafter, the petitioner FCI *vide* letter 4th September, 2008/5th September, 2008, sought withdrawal of the aforementioned show-cause notice stating to the effect that the CGIT Award has been substantially implemented.

15. Subsequently, the Board of Directors of the petitioner FCI *vide* its meeting held on 22nd October, 2008, approved the extension of service benefits being granted to the regular employees of petitioner FCI to the employees under the respondent Union as an alternative to the benefits drawn by central government canteen employees.

16. The petitioner FCI *vide* letter dated 21st November, 2008, informed the respondent Union of the aforesaid development and requested to settle the matter amicably, a copy of which was also sent to the learned RLC and the Assistant Labour Commissioner. Furthermore, the respondent Union also informed the learned RLC of the aforesaid development *vide* letters dated 2nd December, 2008 and 10th December, 2008.

17. Thereafter, on 2nd January, 2009, the respondent Union sent a letter stating withdrawal of all the pending cases *qua* implementation of the CGIT Award, based on the petitioner FCI agreeing to extend facilities/allowances in view of direction provided in the CGIT Award.

18. Pursuant to the same, the petitioner FCI and the respondent Union entered into a Memorandum of Settlement (“MOS” hereinafter) dated



14th January, 2009, which *inter alia* stated the implementation of the CGIT Award in full and that all grievances of the respondent Union with regard to the same stand amicably settled. The petitioner FCI *vide* a letter dated 14th January, 2009, also informed the learned RLC and the ED's General Manager of various zones, about the aforementioned MOS and settlement of all the pending disputes between the parties.

19. In the year 2013, the learned RLC after having received an application from the respondent Union under Section 33C(1) of the I.D Act, for claim of dues amounting to Rs.4,43,57,629/- as per the CGIT Award, served upon the petitioner FCI a notice dated 25th September, 2013, thereby, directing that the same be paid within a period of 10 days failing which recovery proceedings shall be initiated against it.

20. Pursuant to the above, the petitioner FCI, *vide* letter dated 30th October, 2013, replied to the aforementioned notice wherein, the learned RLC was apprised of the background that lead to the signing of the MOS and it was stated that all the terms of the MOS and the CGIT Award have been complied with in toto.

21. The petitioner FCI was served with yet another notice dated 11th November, 2013, from the learned RLC intimating sanction of requisition certificate and initiation of recovery proceedings of the aforementioned amount.

22. Subsequently, the petitioner FCI by way of an oral representation before the respondent no.3 ("Collector" hereinafter), sought stay of the recovery certificate. However, the petitioner FCI was served upon with a letter dated 21st December, 2013 by the Collector calling upon the



petitioner FCI to deposit a sum of Rs.4,43,57,629/- before 26th December, 2013, failing which it would face warrants of arrest/attachment.

23. The learned RLC after hearing both the parties and reserving the matter on 28th March, 2014 rendered its decision *vide* order dated 24th June, 2014 holding that the MOS arrived at between the parties cannot be construed valid due to non-compliance of Rule 58(4) of the Industrial Disputes (Central) Rules, 1957 (“I.D Rules” hereinafter) and that the execution of the MOS cannot override the CGIT Award.

24. Thereafter, the learned RLC *vide* letter dated 25th September, 2014 directed the petitioner FCI to release the payment of Rs.4,43,57,629/- to the respondent Union as non-compliance of the same would lead to issuance of a recovery certificate by the Collector.

25. Subsequently, the learned RLC *vide* a letter dated 25th September, 2014, directed the office of the Collector to realize the amount of Rs.4,43,57,629/- in terms of letter dated 25th September, 2014.

26. Aggrieved by the aforementioned order dated 24th June, 2014 and letters dated 25th September, 2014 and 25th September, 2014 (“impugned Orders” hereinafter), the petitioner FCI has preferred the instant petition seeking quashing of the same.

PLEADINGS

27. The petitioner FCI filed the instant writ petition on 28th November, 2014, and submitted the below stated arguments:

“.....A. FOR THAT the action threatened by the Respondents is evidently unsustainable and bad in law inter alia for the reasons enumerated herein below:

i. The impugned order is patently flawed as it relies upon tenuous hyper-technical grounds for invalidating



a Memorandum of Settlement, without taking a holistic view of the matter.

ii. The impugned order ignores that the aims and objects of the provisions of the Industrial Disputes Act include industrial peace, which is essential to the Industrial development and economy of the nation. Great emphasis is, therefore, laid on the settlements as they set at rest all the disputes and controversies between the employer and the employees.

iii. A bare reading of Rule 58 of the Industrial Disputes (Central) Rules, 1957, clearly shows that it presupposes the existence of a settlement already arrived at between the employer and the workmen and it only prescribes the form in which the Memorandum of settlement should be, and by whom it should be signed. It does not deal with the entering into or arriving at a settlement.

iv. Particular emphasis laid by the Respondent No. 1 on the purported non-compliance with sub-rule' (4) of Rule 58 to declare the MoS dated 14.1.2009 as invalid is utterly misconceived.

v. The following conditions were met, which impart validity to the said Settlement:

(a) signed by the parties in the prescribed manner;

(b) a copy thereof was sent by the Petitioner to the authorized officer of the appropriate Government/ the Conciliation Officer on the very date of the signing of the MoS, which was received by the latter on 20.1.2009; and

C Even before concluding the MoS, a draft of the said Settlement was forwarded to the authorized officer of the appropriate Government/ the Conciliation Officer vide letter dated 21.11.2008 and it was implicitly approved by him.

(d) The ALC C, was kept duly informed about the said settlement from time to time during the



said Conciliation proceedings both prior to concluding the MoS and post its execution.

B. FOR THAT the Respondent Authority erred in callously ignoring that the said settlement was a valid settlement and, thereunder, the FCI Management had voluntarily extended various benefits to the concerned employees. The said Settlement had been acted upon since 2009 and the said employees, since 2009, had taken advantage of the terms thereof and enjoyed the benefits thereunder. As such, the Respondent Union was debarred by estoppels from opposing the said settlement and, in fact, the settlement had never been challenged

C. FOR THAT the Impugned Order was passed on flimsy hyper technical grounds inasmuch as the ALC C, was duly informed about the said settlement from time to time during the said Conciliation proceedings, both prior to concluding the MoS and post its execution/As such, the decision to hold the MOS as invalid was not only bad in law but also prejudicial to the interest of the employees in view of the diverse benefits given to them thereunder.

D. FOR THAT the Respondent Authority miserably failed to appreciate that the CGIT Award dated 6.3.2000 had been implemented fully and was categorically accepted by the parties to have been so implemented by means of the - concluded MoS dated 14.1.2009. Having so admitted and having taken advantage of the provisions of the said MoS for over 5 years, it was not permissible to resurrect the issue of non-implementation of the said CGIT Award. Insofar as the recommendations of the 6th Pay Commission were concerned, the Petitioner had stated categorically that the same would be implemented from the date the service rules are framed, which was a pre requisite condition accepted by the Respondent Union under the MOS. The Respondent Union cannot be permitted to approbate and reprobate simultaneously or to accept certain clauses in the MoS that suits it and reject those clauses in the MoS that doesn't.

E. FOR THAT during the conciliation proceeding, the Respondent Union contended that the benefits under the



CGIT Award had neither been relinquished by them by entering into settlement dated 14.1.2009 nor had been extended to them. Inasmuch as all the terms of the said MOS, whereby the benefits under the said CGIT Award was accepted to have been extended to the said canteen employees, had been adhered to by the Petitioner and the provisions of the said MoS was legally binding upon the parties, any claim made by the Respondent Union contradistinction to the said MOS was untenable.

F. FOR THAT it is an irrefutable fact that the MOS dated 14.1.2009 was concluded between the parties, which subsumed the CGIT Award and whereby the CGIT Award was deemed to have been given effect to in its entirety by means of the MOS dated 14.1.2009. Raising of any grievance qua non-implementation of CGIT Award was absolutely untenable and in fact tantamounted to raking up a dead past. Anything stated in contrary to the aforesaid incontrovertible position would be manifestly flawed and indefensible. The Respondent No. 2 erred in holding that it was incumbent upon the Petitioner to first comply with the CGIT Award and the MOS could be concluded only for giving extra benefits. The finding that the MOS was not an impediment to the implementation of the CGIT Award erred in appreciating that the MOS was concluded for the purpose of giving all the benefits as directed under the CGIT Award. The CGIT Award could not be construed as a panacea for all ills or as a "wish tree" (Kalpa-brichha).

G. FOR THAT even assuming without admitting, that the settlement is invalid, another reason why the impugned orders is unsustainable is that there was no adjudication on the issue of quantum of liability that has been arbitrarily fastened upon the Petitioner. No opportunity was granted to the Petitioner to dispute the said quantification of liability, and straightaway, demand was imposed upon the Petitioner and soon thereafter, the impugned Recovery Certificate was issued and the Petitioner was threatened with coercive recovery proceeding, inter alia entailing arrest and attachment. This approach adopted by the Respondent



Authorities is completely anathema to the canons of natural justice and deserves to be quashed in the bud by the process of judicial review.

H. FOR THAT since there is a dispute with regard to the liability to pay, the Respondent No.2 failed to appreciate that the provisions of Section 33(G)(1) of the Act were not attracted, and/or the recovery certificate could not be issued, without deciding the said dispute.

I. FOR THAT the Respondent No. 1 has manifestly exceeded its jurisdiction and, as such, the action and the threatened coercive action in pursuance to the letters dated 24.6.2014, 25.9.2014 and 16.10.2014 issued by the Respondent No. 2 and the Recovery proceeding threatened by the Respondent No. 3 at the behest of the Respondent No.2, is unsustainable and non est in law.

x x x

N. FOR THAT a statutory body, which is entrusted by a statute with discretion, must act fairly. It matters very little whether its functions are judicial, quasi-judicial or administrative. The body with the power to decide cannot lawfully proceed to make a decision until it has afforded to the person affected a proper opportunity to state his case. If the essentials of justice are ignored, the order, without any doubt, is a nullity. No one can deny the fact that administrative authorities created by statutes have no arbitrary, uncontrolled and untrammelled powers and that they are not immune from judicial scrutiny.

x x x

W. FOR THAT the essence of natural justice is fairness in a action. Even in administrative proceedings, the doctrine of natural justice would be attracted, requiring that the person to be affected by such action must be given an opportunity to be heard and passing of reasoned order pursuant thereto. The purpose of the rule of natural justice is to prevent miscarriage of justice.....”

28. In response to the present petition, the respondents no.1 and 2 have filed the counter affidavit dated 8th May, 2015, wherein, the contentions



advanced in the present petition are opposed by way of the following arguments:

“.....A-AA Grounds A to AA of the writ petition, as alleged, are wrong and are denied and the same are not at all available to the petitioner in view of the detailed submissions made hereinabove, which may be read as an integral part hereof for the sake of brevity. It is respectfully submitted that while passing the order dated 24.06.2014 the following two issues were framed.

(i) Whether the settlement dated 14.01.2009 between the management of FCI and FCI Canteen Employees Union is a valid settlement under the Industrial Disputes Act, 1947 and comes in the way of implementation of the award.

(ii) Whether the Memorandum of Settlement dated 14.01.2009 overrides the award dated 06.03.2000 passed by the CGIT.

The Issues were examined as follows:-

(i) Whether the settlement dated 14.01.2009 between the management of FCI and FCI Canteen Employees Union is valid settlement under the Industrial Disputes Act, 1947 and comes in the way of implementation of award.

Under Section 2(p) of the Industrial Act, 1947 Settlement means a settlement arrived at in the course of conciliation proceedings and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceedings where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate government and the conciliation officer.

Rule 58(4) of the Industrial Disputes (Central) Rules, 1957 prescribes that "where a settlement is arrived at between an employer and his workmen otherwise than in the course of conciliation proceeding before a Board or a Conciliation officer, the parties to the settlement shall jointly send a copy



thereof to the Central Govt., Chief Labour Commissioner (Central), New Delhi and the Regional Labour Commissioner (Central) and to the Assistant Labour Commissioner (Central) concerned"

As such a copy each of settlement arrived at between the management of FCI and FCI canteen employees Union should have jointly sent to the Central Govt., Chief Labour Commissioner (Central), New Delhi and the Regional Labour Commissioner (Central) and to the Assistant Labour commissioner (Central), New Delhi in the order that the settlement would have satisfied all the requirement of a valid settlement.

On going through the memorandum of settlement dated 14.01.2009, it is not found that the both the parties have jointly agreed to send or have sent a copy of the said Memorandum of Settlement to the Secretary, Central Govt., Chief Labour Commissioner (Central), New Delhi and the Regional Labour Commissioner (Central) and to the Assistant Labour Commissioner (Central). There is nothing on record provided by either the management or the union that the copy of the MOS was sent to all the authorities as mentioned above. As such settlement could not be regarded to be a valid settlement under the Industrial Disputes Act, 1947.

Further, the Memorandum of settlement does not come in the way of implementing the award passed the CGIT on the following grounds

- i) The award is about the entitlement of FCI canteen employees in respect of their pay and allowances and other service benefits at par with the employees of the department/statutory canteen employees which means that the employees of the canteen must receive a parity in the matter of pay, allowances and other service benefits with the employees of the department/statutory canteen employees.*
- ii) First the Corporation has to implement the award in its letter and spirit and thereafter it*



intends to give extra benefits, that can be extended to by way of Memorandum of Settlement. However, the Memorandum of Settlement cannot misdirect the letter and spirit of the award dated 06.03.2000 in I.D.No. 3/94 and 32/94.

iii) It is the management which has to establish that the requisites of a settlement had been complied with. The management has failed to establish that the Memorandum of settlement contains all the requisites of a settlement which is defined under Section 2(p) of the Industrial Disputes Act. It is established law that a party who wants to take advantage of settlement has to establish that the requisites of settlement had been complied with. It was so held in Rattan Singh Vs State of Punjab and others, reported in 1983 Labour Industrial Cases I.C NOC 39 (Punjab and Haryana High Court) in writ petition no. 6261 of 1975 decided on 16.12.1982. The requisites must be of Section 2 (p) of the Industrial Disputes Act, 1947 and Rule 58 of Industrial Disputes (Central) Rules, 1957. The Memorandum of settlement pleaded by the employer was not arrived at in the course of conciliation proceedings nor was it a written agreement made in the manner as prescribed under Rule 58. Copy of the MOS was not jointly agreed to be sent to the Conciliation Officer or any other officer who has been authorized in this behalf by the Government under Rule 58(4) of the Industrial Disputes (Central) Rules, 1957. Nor could the management establishment that it was jointly sent to all of them.

iv) That the Memorandum of settlement is neither a just nor fair one as it dilutes the claim of the workmen. In General Manager, Security Paper mill, Hoshangabad vs R. S. Sharma and



others, 1986 Labour Industrial Cases 667, the apex court while dealing with the scope of Section 2(p) and 18 of the Industrial Disputes Act held that any settlement arrived at should be just and fair one". The court brought out a distinction between a settlement arrived at in the course of conciliation proceedings and a settlement arrived at by agreement between the employer and workmen otherwise than in conciliation proceedings both as regards the procedure to be followed in the two cases and as regard the persons on whom they are binding. It has categorically ruled therein that a copy of settlement has to be sent to the officer authorised by the appropriate govt. in this behalf and to the conciliation officer.

v) At the time of signing of the memorandum of settlement pleaded by the management, no dispute between employees of the canteen maintained by the FCI and the management of FCI was pending. The dispute was already settled vide the award dated 06.03.2000. There being no dispute, no settlement could have been arrived at. The preamble of the Act reads" An Act to make provision for the investigation and settlement of industrial dispute As such it is clear that existence of a dispute is a precondition to a settlement.

From the above, it is established beyond doubts that the memorandum of settlement pleaded by the management as an impediment to the implementation of award does not merit to be taken into consideration.

vi) Whether the MOS dated 14.01.2009 overrides the award dated 06.03.2000 passed by the CGIT.

under Section 2(b) of the Industrial Disputes Act, 1947 an award is not only interim or a



final determination of any industrial dispute or of any question relating thereto by any Labour court. Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10 A.

Under Section 18(3) of the Industrial Disputes Act, 1947 an award is not only binding on the parties to the Industrial Disputes, but also the parties summoned to appear in the proceedings as parties to the dispute, the heirs, successors and assigns of the employer and all the persons who were employed in the establishment to which the dispute relates on the date of disputes and also all persons who subsequently are employed in the establishment.

Unlike an award under Section 18(1) of the Act, a settlement arrived at by agreement between the employer and workmen otherwise than in the course of conciliation proceedings is binding only on the parties to the agreement.

Considering the wide variation in the binding effect of an award and a bi-partite settlement, the intention of the legislature appears to be clear that a bi-partite settlement can't be treated at par with an award and that an award assumes greater force than a bi-partite settlement. As such even if the settlement dated 14.01.2009 arrived at between the management of FCI and FCI canteen employees union is assumed to be valid settlement, it cannot override the award dated 06.03.2000. If such a settlement is allowed to override an award, the employees of the establishment belonging to other unions and also the employees who are subsequently employed in the establishment will be greatly prejudiced as they will be deprived of the benefits accruing from the award. As such neither any union nor the employer should be legally permitted to arrive at a bi-partite settlement in substitution of an award.....”

29. In response to the present petition, the respondent no.4 has filed the counter affidavit dated 21st May, 2015, wherein, the contentions advanced in the present petition are opposed by way of the following arguments:



“.....1) That I am the General Secretary of FCI Canteen Employees Union. I am competent to file this Counter Affidavit on behalf of Respondent No.4. I have gone through the contents of the Writ Petition. I am advised to say that the Writ Petition is without any substance and the same is liable to be dismissed. The orders issued by the Respondents No.2 on 24.06.2014, 25.09.2014 and 16.10.2014 are not required to be interfered. It is submitted that the orders passed by the Respondent No.2 for implementation of Award dated 06.03.2000 passed by the Central Government Industrial Tribunal (CGIT) in ID No.3/1994 are legal, justified and there is neither a jurisdictional error nor violation of principle of natural justice nor perverse nor suffers from any illegality.

x x x

5. That as per Award of the CGIT dated 6th March, 2000, the canteen employees of the Corporation are entitled for pay allowances and other service facilities equal to the Central Government departmental canteen employees. It is pertinent to mention that the CGit opined in first part of para 41 of the Award that the canteen employees cannot be given parity in the payment of pay allowances and other service benefits equal to the general employees of the Corporation. It is also pertinent to mention that the second part of para 41 speaks clearly that the canteen employees can be given all the service benefits such as pay and allowances etc as given to the employees of the departmental/statutory canteen employees.

6. That the Ministry of Personnel, Public Grievances and Pensions and Department of Personnel & Training, the Director of Canteens, Government of India issued an office memorandum dated 24th September, 1998 in which it revised the scales of pay of common category of non-statutory/departmental canteen employees/staff of various departments. A copy of this office memorandum is annexed as Annexure R-1.

x x x



9. That a comparison of the pay scale as given to the canteen employees of the Food Corporation of India and the canteen employees of non-statutory/departmental canteen employees of the Central Government would reveal that the pay scales for FCI Canteen staff as offered vide office order dated 18.9.2000 were different than the pay scale applicable to the staff of the canteen employees of the Central Government. For convenience, a comparative chart is annexed as Annexure R-4.

x x x

16. That the deponent is legally advised to say that since the proceedings before the Respondent No.2 for implementation of award were under Section 33C(1) of the Industrial Disputes Act, the request for reference under Section 10(2) of the Act was not maintainable. However, the proceedings before Respondent No.2 under Section 33C(1) continued without any outcome and the Petitioner stopped appearing. The Respondent No.4 requested the Respondent No.2 for summoning the petitioners.

x x x

27. It is submitted that in the MOS dated 14.01.2009 there is no revision of pay and scales of the canteen employees equal to that of Central Government canteen employees. What it contained was an assurance only in para 3(iii) and the implementation of the benefits was with prospective effect and not from the date of effectiveness of the award, therefore, cannot be termed as full implementation of the award. This alleged Settlement was not arrived at in the conciliation proceedings and the MoS does not bear the signature of the Conciliation Officer. A copy of the same was not sent to the designated offices as provided under the provisions of Rule 58 of Industrial Disputes (Central) Rules, 1958 read with Section 18(1) and Section 2(p) of the Industrial Disputes Act. That the deponent is legally advised to state that the MoS dated 14.01.2009 does not confirm to the requirement of Section 2(p), Section 18 of the Act and Rule 58 of the Industrial Disputes (Central) Rules. It is submitted that the CGIT award dated 6.3.2000 was not



implemented in full and final by means of Memorandum of Settlement (MoS). It is denied that the FCI canteen employees were left with no grievance regarding the implementation of the said award. It is further denied that the dispute regarding implementation of the award in full and final stood amicably settled. It is further denied that MoS was binding on the parties. It is further denied that the revision of pay scales for the posts mentioned was envisaged in the award for making applicable with prospective effect i.e. from the date of revision of recruitment rules for the said post. The said MoS dated 14.01.2009 annexed by the petitioner as Annexure P-4 therefore does not come in the way for implementation of the award dated 06.03.2000.

x x x

29. That the deponent submits that sending a copy of the alleged Memorandum of Settlement dated 14.01.2009 by the petitioner Corporation vide letter dated 14.01.2009 and its reply by respondent No.2 does not comply with the requirement of Rule 58 of the Industrial Disputes (Central) Rules, 1958 and the communication or the MoS do not qualify to be a settlement as defined in Section 2(p) and Section 18(1) of the Industrial Disputes Act.....”

30. The petitioner FCI has filed its written submissions dated 8th February, 2024, submitting the below extracted arguments:

*“.....**PRIMARY GROUND:** RLC does not have the **Jurisdiction or Competence to pass the impugned order.** As such, the impugned order and the RCs are a **nullity.***

*i. RLC’s powers under Section 33C(1) of the ID Act is **limited to entertaining an Application for recovery of amount due under a settlement or an Award, when the amount is quantified under the award or settlement AND to issue Recovery Certificate to the Collector, if the quantified amount is not paid.** So, RLC only has powers of **execution of Money Decree** under an Award or to recover a quantified amount under a Settlement, if the same is not paid.*



ii. However, the CGIT Award of 6.3.2000 (Pages 62-103) is **not a Money decree**. Even assuming that there was no Settlement or that the MOS is invalid, the CGIT Award requires quantification of amount due, if any. This can be done only under Section 33C (2) of the ID Act by a Labour Court/IT.

iii. Therefore, it is evidently apparent that the RLC did not have jurisdiction to pass the Impugned Order dated 14.06.2014 and also to issue the impugned Recovery Certificate.

Judgment: Supreme Court in (i) - para 7-9 (Pg. 2-4 Compilation of Judgments) & (ii) Fabril- para 19 –(page 15-16 of compilation) and iii) Punjab and Haryana HC in Malout Transport: para 8 (Pg. 21 of Compilation)

Ratio Decidendi of the above Judgments: S.33C is in the nature of execution proceedings. Sub-section (1) comes into play when the amount is determined and requires no adjudication. Government does not have the power to determine the amount due under subsection (1) and that determination can be done only under sub-section (2) by the Labour Court.

The scope of 33C(1) is limited. Labour Commissioner is not competent to determine the amount due in terms of the settlement. Order of Labour Commissioner and Recovery Certificate quashed.

Secondly, a Settlement which has been duly signed by all the parties and acted upon for 5 years cannot be invalidated, without a judicial process. RLC is not vested with judicial powers. The Hon'ble Supreme Court in the case of Mayurakshi – 2000(3) SCC 446 paras 2 & 4 (Pg. 24, 25 of Compilation) held that even a writ court cannot decide the validity of a settlement because factual aspects are involved; only an Industrial Tribunal or a Labour Court can do so.

Orders passed without jurisdiction is a NULLITY. Invalidity can be set up anywhere before any Court whenever such order is sought to be enforced. (Harshad Chimanlal Modi 2005 (7) SCC 791 para 30 -33) (Pg. 40-41 of Compilation)



SUBMISSIONS ON CLAIMS OF THE RESP. UNION (R-4):

The Respondent Union's stand is that the said settlement was confined to fringe benefits and it is over and above the benefits under the CGIT Award. This contention is completely contrary to clause 11(iii) of the MOS (Pg. 109) & Clause 15 of the MOS (Pg. 110).

In compliance of ORDER dated 13.3.2020, Reply was filed to CM No. 27769/2020, stating inter alia that OM dated 15.10.2008 of DoPT is being followed (Pgs.26-29 Reply to CM 27769/20); nothing is due and payable to the members of R-4; for comparative analysis (see Pgs. 30-32 of the Reply)

Secondly, these claims cannot be adjudicated either under writ jurisdiction or under section 33C of the ID Act, muchless under subsection (1) of S.33C.

Writ Court-should not entertain dispute when alternative statutory remedy available (RS Pandey 2005 (8) SCC 264 Para 20) (Pg. 52 of Compilation)

Proceedings under Section 33C has been held in a catena of judgements to be akin to execution proceedings. Subsection (1) of S.33C empowers the RLC to entertain an application for recovery of money when the amount to be paid to the workmen is quantified is not quantified under the award or settlement. Where the amount is not quantified but it is undisputed that there are outstanding amounts under the award of the settlement, then subsection (2) comes into play, whereunder Labour Court will ascertain the amount that is to be paid.

However, the present dispute cannot be resolved under execution proceedings of section 33 C. Here, the dispute is more fundamental and deeper, questions requiring evidence & adjudication:

(a) whether the award has been implemented, with modifications, by the settlement dated 14.1.2009



(b) whether the settlement pertains to only fringe benefits and not to pay scales;

C whether the settlement is valid.

Such dispute, which **requires adjudication**, where even the entitlement of workmen is under dispute, which can be resolved only by taking proceedings Section 10 of the ID Act. (see *MCD vs. Razak* 1995 (1) SCC 235 Para 8-10, 11-13) (Pg. 64-68 of Compilation): **Entitlement cannot be decided under Section 33C of the ID Act — it requires a reference under Section 10 of the Act.**"

De hors the Primary Submission - Other Patent Errors in the IJ:

1st Submission: Rule 58(4) has been held to be DIRECTORY. Bombay High Court (*Rajinder Singh- para 4*) (Pg. 70 of Compilation); (*FCI Handling Worker's Union - para 8*) (Pg. 81-2 of Compilation). Therefore a Settlement which is valid in all other respect cannot be considered to be invalid on this hyper-technical procedure, which is only directory.

2nd Submission: **SETTLEMENT IS A PACKAGE DEAL;** R-4 cannot approve and reprobate. It cannot pick and choose different parts of settlement.

Resp. Union has problem with Clause 11 of MoS (Page 109) while it is enjoying the benefits under the MOS. (*Herbertson* 1976 (4) SCC 736 para 21, 27-28) (Pg. 91, 93 of Compilation): - **Settlement is a package deal.**

3rd Submission: The Impugned Order says **SETTLEMENT CANNOT SUPPLANT AN AWARD** (Page 173). This is incorrect – any award or decree can be varied by parties with their mutual consent. SC puts settlement on a higher pedestal than Award. (*Virudhachalam* 1998 (1) SCC 650 para 6 @ Pg. 102 of Complilation) (*Herbertson* para 28: Pg. 93 of Compilation).

x x x

5th Submission: Even assuming that Settlement is invalid for technical reasons and **without prejudice** to the contention that RLC does not have jurisdiction, the amount of Rs.4.43 crores cannot straightaway be directed to be paid by RLC because



this direction violates the principles of NATURAL JUSTICE.....”

31. The respondent no. 4 has also filed on record its written arguments dated 13th February, 2024, relevant extracts of which are as under:

“.....1. That the Respondent No. 4, in compliance of the directions passed as aforesaid is presenting brief sketch of written synopsis under the light of State of Punjab v.JagjitSingh(2017) 1 SCC 148. Fortunately Central Government Industrial Tribunal, in short CGIT dated 6th March, 2000 has rightly followed chequered principles of law in respect of "Equal pay for equal work" hence it has rightly recorded in para 40 in the following terms:

*. . . Undisputedly the canteen employees belong to the non-statutory canteen but the nature of the duties performed by them certainly show that they are similar to the duties performed by the employees of the departmental canteen. It is also undisputed fact that the canteen employees of the corporation are paid their salaries, allowances and other services benefits similar to the statutory canteen employees on the specific direction of the Hon'ble Supreme Court of India and the same, I find cannot be curtailed in any manner. It is found that the Canteen Employees of the Corporation is entitled for pay allowances and other service benefits equal to the Central Government Department Canteen Employees. Fortunately, the petitioner **has neither challenged the said award nor the recovery certificate** dated 13.11.2013 but only follow up steps contained in the letters of 24.06.2014, 25.09.2014 and 16.10.2014 which is not maintainable to be challenged as these letters/certificates are only for purposes of execution of the award. Needless to submit that recovery certificate are equivalent to recovery of land revenue/money decree. In the meanwhile the Hon'ble Supreme Court has also analysed doctrine of equal pay for equal work in AIR 2016 SC 5176 State of Punjab Vs. Jagjit Singh*



& Ors by referring to enumerable earlier authorities laid down by Hon'ble Supreme Court and High Courts and ultimately held that even principle of equal pay for equal work has also extended to temporary employee.

2. The petitioner has not complied with the said award dated 06.03.2000 as whenever the Petitioners are entitled for upgradation and revision of their pay scales, the Petitioners always kept on denying their entitlement of revised /upgraded pay scale.

*The entitlements of the Members of the Respondent No. 4 in respect of their pay has clearly demonstrated in the statement showing difference between revised pay and allowances of Department Canteen Employees which has already been annexed as Annexure R-6 at pages 103-104 to the counter affidavit filed by the Respondent No.4 vide dated 29.06.2015. In order to deny full benefits of the award, even the Petitioner who takes shelter of a Memorandum of Settlement dated 14.01.2009 executed between the Petitioner and the Respondent No. 4. **The settlement only covers allowances and not pay scales.** The pay scales cannot be bargained as the pay is always revised by Central Government orders and initiatives. Even that settlement has no force of law for want of compliance contained in Rule 58 of the Industrial Disputes (Central) Rules, 1957.*

(4) Where a settlement is arrived at between an employer and his workmen otherwise than in the course of conciliation proceedings before a Board or a Conciliation Officer, the parties to the settlement shall jointly send a copy thereof to the Central Government, the Chief Labour Commissioner (Central), New Delhi and the Regional Labour Commissioner (Central) and to the Assistant Labour Commissioner (Central) concerned." Regional Labour Commissioner in its order dated 24.06.2014 has clearly decided the issue of binding effect of the award.

3. The settlement is absolutely invalid settlement for the following reason:

(i) There was no conciliatory proceedings nor was there any Conciliation Officer after passing of the award.



(ii) *The settlement has not been sent by both the parties jointly. The requirement of rule is that any settlement has to be sent jointly by the parties concerned. No settlement has ever been sent either jointly or individually by either of parties;*

(iii) *No copy thereof has been sent to the Central Government, the Chief Labour Commissioner (Central), New Delhi and Regional Labour Commissioner (Central) and to the Assistant Labour Commissioner (Central) concerned. It is submitted that none of Labour Authority has been sent to just mentioned authorities. In case, the same could have been sent that too could have been related to allowance only and not pay scale. The Respondent No. 4 is entitled to full scale as awarded in the award passed by the CGIT dated 6.3.2000, which has not been superseded by any conduct of the parties or order of any court nor the same can be superseded by any person.*

4. *Notwithstanding, the petition came up for hearing on 23.03.2020 before this Hon'ble Court and the following order was passed: "On 16th October 2019, it was recorded specifically that the Petitioner is not aggrieved by the award passed by the Central Government Industrial Tribunal dated 6th March, 2000 but only the manner in which it is sought to be interpreted. Accordingly, before proceeding further in this matter, it is directed that both parties shall place their respective computations within eight weeks as to what would be the amount payable in terms of the said award. The contention of ld counsel for the petitioner is that the settlement substituted the award. On this issue, submissions shall be heard on the next date. It is further submitted that the impugned orders are a nullity.*

List for final hearing on 26nd August 2020".

5. *The answering Respondent has complied with the order dated 13.03.2020 and placed on record, copies of computation sheet along with an application under Section 151, the Code ofCPC bearing CM No. 27769/2020 which is already on record and the same may be referred to as part and parcel of this written argument.*



The Petitioner preferred not to submit any computation despite knowing well that they have been paying the scales to the answering respondents lower than being granted to the Central Government Canteen Employees. In view thereof, the Petitioner is not even complying with the order passed in award. Keeping in view the latest law laid down by Hon'ble Supreme Court in State of Punjab Vs. Jagjit Singh (supra) the entitlement of the respondent No. 4 became even more stronger and stronger, hence the petition deserve} to be dismissed \ with special compensatory cost and levy of interest on the claim of the members of the respondent No.4 since 2000 till payment thereof..... ”

SUBMISSIONS

(On behalf of the petitioner)

32. Learned counsel appearing on behalf of the petitioner FCI submitted that the impugned Orders have been passed without taking into consideration the entire facts and circumstances thus, violating the Constitutional mandate provided under Articles 14, 19(1)(g) and 21 of the Constitution of India hence, the same are liable to be set aside.

33. It is preliminarily submitted that the impugned Orders have been passed in excess of jurisdiction conferred to the learned RLC as per the statutory mandate under Section 33C(1) of the I.D Act, as the scope under the same is limited and can only be exercised for execution of pre-determined/quantified amount under a settlement or an Award.

34. It is submitted that the learned RLC is bestowed upon with the power to carry out execution of a 'Money Decree' under the Award or recovery of pre-determined settlement amount and since, the CGIT Award, implementation of which is being sought by the respondent Union



is not a Money Decree therefore, an application under Section 33C(1) of the I.D Act is not maintainable.

35. It is submitted that the impugned Orders suffer from an error of jurisdiction since the respondent Union wrongfully sought execution of the CGIT Award by preferring an application under Section 33C(1) of the I.D Act instead, it could have sought reliefs under Section 33C(2) of the I.D Act before the Labour Court/Industrial Tribunal.

36. It is submitted that the grounds stated in the impugned Orders for invalidating a legally binding MOS are flawed and the learned RLC failed to consider the same comprehensively as the MOS is a legally binding document and cannot be invalidated without being put through judicial review as the same has been duly signed by both the parties and had been in force for the past 5 years before being challenged before the learned RLC.

37. It is submitted that the respondent Union is estopped from disputing the MOS as it was entered into voluntarily and the respondent Union has been drawing benefits out of the said agreement since its inception in the year 2009.

38. It is submitted that the learned RLC erred in observing that the MOS is invalid and illegal for non-compliance of prescribed statutory mandated since the petitioner FCI had duly informed and kept the office of the Assistant Labour Commissioner in loop, both prior, and post signing of the MOS.

39. It is further submitted that a perusal of the provisions contained under Rule 58 of the I.D Rules only provides the form and presupposes the existence of a settlement between the workman and the employer. It is



further submitted that the statutory mandate under Rule 58(4) of the I.D Rules is directory and cannot be declared void for failure to comply with a mere hyper-technical procedure and hence, the MOS is valid as it duly complies with the other procedural technicalities prescribed therein.

40. It is also contended that the respondent Union is precluded from challenging the non-implementation of the CGIT Award as upon perusal of the MOS would *inter alia* establish acceptance of the terms of the settlement which state implementation of the CGIT Award in toto. It is further submitted that the respondent Union is barred from approbating or reprobating the clauses contained in the MOS on a pick and choose basis as per its convenience.

41. It is submitted that any grievance raised by the respondent Union *qua* non-implementation of the CGIT Award is untenable and arbitrary as it would tantamount to re-agitating the terms of MOS. It is further submitted that wilfully becoming a signatory to the MOS amounts to having assented to the terms of the settlement especially the one stating that the CGIT Award is being deemed to have been implemented in full thus, subsuming the same under the MOS.

42. It is submitted that the learned RLC erred in observing that it was necessary for the petitioner FCI to comply with the direction of the CGIT Award and it is only after the same had been implemented in entirety, it could have entered into a MOS for extension of certain benefits in excess of those prescribed under the CGIT Award.

43. It is submitted that the impugned Orders have been passed illegally since the same suffers from violation of principles of natural justice as the learned RLC ought to have adjudicated upon the quantum of liability by



giving the petitioner FCI an opportunity to dispute the same however, it passed an order straightaway without affording the petitioner FCI an adequate opportunity to represent its case.

44. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the petitioner FCI seeks that the instant petition may be allowed and the relief be granted as prayed for.

(On behalf of the respondents)

45. *Per Contra*, learned counsel appearing on behalf of the respondents vehemently opposed the instant petition submitting to the effect that instant petition is misconceived and does not suffer from any errors of jurisdiction and violation of principles of natural justice, and hence, the same being devoid of any merit is liable to be dismissed.

46. It is submitted that the impugned Order dated 24th June, 2014 and letters dated 25th September, 2014 and 25th September, 2014, have been passed by the learned RLC in accordance with law and as per the jurisdiction conferred upon it under the statute and that ample opportunities were afforded to the petitioner FCI to put forth its case.

47. It is submitted that the stance taken by the petitioner FCI pertaining to implementation of the CGIT Award reeks with *mala fides* as the employees in the respondent Union have always been subject to grant of lower pay scale.

48. It is submitted that the petitioner FCI has wrongfully asserted that the respondent Union *vide* a letter dated 2nd January, 2009, intimated to the learned RLC about withdrawal of all the pending matters with respect



to implementation of the CGIT Award as it is a matter of record that the said letter was addressed to the Assistant Labour Commissioner (Central).

49. It is submitted that although it is not a disputed fact that the MOS was executed between the petitioner FCI and respondent Union, however, the said MOS is not a settlement within the meaning of Section 2(p) of the I.D Act as it has been carried out under Rule 58 of the I.D Rules, thus, the fact that statutory compliance as mandated under the Rule 58(4) of the I.D Rules has not been complied with, it is not a valid settlement.

50. It is submitted that the alleged MOS is non-binding on the parties as the same was not arrived at in the presence of the conciliation officer which is evident from the fact that MOS does not bear signatures of any conciliation officer and also that it does not comply with the statutory mandate under Section 2(q) and 18(1) of the I.D Act, and Rule 58(4) of the I.D Rules, which basically provides that the copy of MOS has to be jointly send to office bearers as proved therein.

51. It is submitted that the MOS relied upon by the petitioner FCI to strengthen its case only caters to the allowances and does not undertake to comply with the CGIT Award with regard to the pay scales hence, the MOS cannot be used as a tool to bargain the pay scales for allowances.

52. It is further submitted that the learned RLC *vide* its order dated 24th June, 2014, has duly adjudicated upon the validity of the MOS wherein the same was found void for non-compliance of the statutory mandated Rule 58(4) of the I.D Rules and also for the reason that a settlement cannot override/supersede the findings of an Award, therefore, the CGIT Award is binding upon the parties and the MOS is an invalid agreement.



53. It is submitted that the MOS is invalid on several grounds such as the absence of a conciliation officer during and after the completion of the settlement and the same was never sent conjointly to the office bearers stated under Rule 58(4) of the I.D Rules i.e., Central Government, Chief Labour Commissioner (Central), New Delhi, Regional Labour Commissioner (Central) and Assistant Labour Commissioner (Central).

54. It is submitted that the contention raised by the petitioner FCI that the learned RLC is not the competent authority is false due to the fact that as per Section 33C(1) of the I.D Act, the learned RLC is statutorily empowered to carry out the implementation of a CGIT Award.

55. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the respondents prayed that the instant petition, being devoid of any merits, may be dismissed.

ANALYSIS AND FINDINGS

56. Heard the learned counsel for the parties and perused the material available on record.

57. The instant petitioner has approached this Court seeking quashing and setting aside of the Orders dated 24th June, 2014 and letters dated 25th September, 2014 and 25th September, 2014 passed by the learned RLC.

58. It is the case of the petitioner FCI that the impugned Orders have been passed in excess of jurisdiction conferred to the learned RLC as per the statutory mandate under Section 33C(1) of the I.D Act as it provides only for execution of pre-determined/quantified amount. It is asserted that the MOS was wilfully signed by both the parties, thereby, amounting to having assented to the clause wherein CGIT Award is deemed to have



been implemented in full. It is further contended that the grounds stated in the impugned Orders for invalidating the legally binding MOS are arbitrary and illegal as the statutory mandate under Rule 58(4) of the I.D Rules is merely directory in nature.

59. In rival contentions, the respondent Union contended that the MOS is non-binding on the parties as the same was arrived at in the absence of a conciliation officer and the statutory mandate under Section 2(q) and 18(1) of the I.D Act read with Rule 58(4) of the I.D Rules, to jointly send a copy of the MOS to designated officers specified under Rule 58(4) has not been complied with. It is further contended that the petitioner FCI's contention that the CGIT Award has been fully implemented reeks of *mala fides* as the employees represented by the respondent Union have always been subject to grant of lower pay scale.

60. Having heard both the parties at length, the following issue emerges before this Court for adjudication:

Whether the Regional Labour Commissioner exceeded its jurisdiction while passing the impugned Order dated 24th June, 2014 and letters dated 25th September, 2014 and 25th September, 2014?

61. At the outset, this Court deems it apposite to deal with the preliminary contention raised by the petitioner FCI which is with regard to the learned RLC lacking jurisdiction to pass the impugned Orders.

62. The five Judge Constitutional Bench of the Hon'ble Supreme Court in ***Central Bank of India Ltd. v. P.S. Rajagopalan¹***, charted out the

¹ (1964) 3 SCR 140



legislative history and intent behind Section 33C of the I.D Act and also drew a distinction between Section 33C(1) and Section 33C(2) of the I.D Act. The relevant paragraphs are reproduced herein below:

“.....11. Before dealing with the question of construction thus raised by the parties in the present proceedings it would be material to refer briefly to the legislative history of this provision. The Act, as it was originally passed made relevant provisions on the broad basis that industrial disputes should be adjudicated upon between trade unions or representatives of labour on the one hand and the workmen's employer's on the other. That is why Section 10(1) which deals with the reference of disputes to boards, courts or tribunals, has been interpreted by this Court to mean that the disputes which are referable under Section 10(1) should be disputes which are raised by the trade unions to which the workmen belong or by the representatives of workmen acting in such a representative character. It was, however, realised that in denying to the individual employees a speedy remedy to enforce their existing rights, the Act had failed to give due protection to them. If an individual employee does not seek to raise an industrial dispute in the sense that he does not want any change in the terms and conditions of service, but wants only to implement or enforce his existing rights, it should not be necessary for him to have to take recourse to the remedy prescribed by Section 10(1) of the Act; that was the criticism made against the omission of the Act to provide for speedy enforcement of individual workman's existing rights. In order to meet the criticism, an amendment was made by the legislature in 1959 by Section 20 of the Industrial Disputes (Appellate Tribunal) Act, 1950 (48 of 1950). Section 20 of this Act provided for recovery of money due from an employer under an award or decision. This provision filled up the lacuna which was discovered, because even after an award was made individual workmen were not given a speedy remedy to implement or execute the said award, and so, Section 20 purported to supply that remedy. Section 20(1) provided that if money was due under an



award or decision of an Industrial Tribunal, it may be recovered as arrears of land revenue or as a public demand by the appropriate Government on an application made to it by the person entitled to the said money. Section 20(2) then dealt with the cases where any workman was entitled to receive from the employer any benefit under an award or decision of an Industrial Tribunal which is capable of being computed in terms of money, and it provided that the amount at which the said benefit could be computed may be determined, subject to the Rules framed in that behalf, by that Industrial Tribunal and the amount so determined may be recovered as provided for in sub-section (1). In other words, the provisions of Section 20(2) roughly correspond to the provisions of Section 33-C(2) of the Act. There are, however, two points of distinction. Section 20(2) was confined to the benefits claimable by workmen under an award or decision of an Industrial Tribunal; and the application to be made in that behalf had to be filed before the Industrial Tribunal which made the said award or decision. These two limitations have not been introduced in Section 33-C(2). Section 20(3) corresponds to Section 33-C(3). It would thus be noticed that Section 20 of this Act provides a speedy remedy to individual workmen to execute their rights under awards or decisions of Industrial Tribunals. Incidentally, we may add that Section 34 of this Act made a special provision for adjudication as to whether conditions of service had been changed during the pendency of industrial proceedings at the instance of an individual workman and for that purpose inserted in the Act Section 33-A. Act 48 of 1950 by which Section 20 was enacted came into force on May 20, 1950.

12. In 1953, the legislature took a further step by providing for additional rights to the workmen by adding Chapter V-A to the Act, and passed an amending Act 43 of 1953. Chapter V-A deals with the workmen's claims in cases of lay-off and retrenchment. Section 25(1) which was enacted in this Chapter provided for the machinery to recover moneys due from the employers under this Chapter. It laid down, inter



alia, that any money due from an employer under the provisions of Chapter V-A may be recovered in the same manner as an arrear of land revenue or as a public demand by the appropriate Government on an application made to it by the workman entitled to the said money. This was, of course, without prejudice to the workman's right to adopt any other mode of recovery. This provision shows that having created additional rights in the workmen in respect of lay-off and retrenchment the legislature took the precaution of prescribing a speedy remedy for recovering the said amounts from their employers. This amending Act came into force on December 23, 1953.

13. About three years later, the legislature passed the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (36 of 1956). This Act repealed the Industrial Disputes (Appellate Tribunal) Act 48 of 1950, Section 25-1 in Chapter V-A and inserted Section 33-C(1), (2) and (3) and Section 36-A in the Act, The result of these modifications is that the recovery provisions are now contained in Section 33-C and an additional provision is made by Section 36-A which deals with cases where doubt or difficulty may arise in the interpretation of any provision of an award or settlement. This Act came into force on August 28, 1956.

14. In order to make the narration of the legislative background of Section 33-C complete, we may refer to the fact that by the amendment Act 18 of 1957, two more provisions were added to Chapter V-A which are numbered as Section 25-FF and Section 25-FFF. This Act came into force on June 6, 1957.

15. The legislative history to which we have just referred clearly indicates that having provided broadly for the investigation and settlement of industrial disputes on the basis of collective bargaining, the legislature recognised that individual workmen should be given a speedy remedy to enforce their existing individual rights, and so, inserted Section 33-A in the Act in 1950 and added Section 33-C in 1956. These two provisions illustrate the cases in which



individual workmen can enforce their rights without having to take recourse to Section 10(1) of the Act, or without having to depend upon their union to espouse their cause. Therefore, in construing Section 33-C we have to bear in mind two relevant considerations. The construction should not be so broad as to bring within the scope of Section 33-C cases which would fall under Section 10(1). Where industrial disputes arise between employees acting collectively and their employers, they must be adjudicated upon in the manner prescribed by the Act, as for instance, by reference under Section 10(1). These disputes cannot be brought within the purview of Section 33-C. Similarly, having regard to the fact that the policy of the legislature in enacting Section 33-C is to provide a speedy remedy to the individual workmen to enforce or execute their existing rights, it would not be reasonable to exclude from the scope of this section cases of existing rights which are sought to be implemented by individual workmen. In other words, though in determining the scope of Section 33-C we must take care not to exclude cases which legitimately fall within its purview, we must also bear in mind that cases which fall under Section 10(1) of the Act for instance, cannot be brought within the scope of Section 34-C.

16. *Let us then revert to the words used in Section 33-C(2) in order to decide what would be its true scope and effect on a fair and reasonable construction. When sub-section (2) refers to any workman entitled to receive from the employer any benefit there specified, does it mean that he must be a workman whose right to receive the said benefit is not disputed by the employer? According to the appellant, the scope of sub-section (2) is similar to that of sub-section (1) and it is pointed out that just as under sub-section (1) any disputed question about the workmen's right to receive the money due under an award cannot be adjudicated upon by the appropriate Government, so under sub-section (2) if a dispute is raised about the workmen's right to receive the benefit in question, that cannot be determined by the Labour Court. The only point which the Labour Court can determine*



is one in relation to the computation of the benefit in terms of money. We are not impressed by this argument. In our opinion, on a fair and reasonable construction of sub-section (2) it is clear that if a workman's right to receive the benefit is disputed, that may have to be determined by the Labour Court. Before proceeding to compute the benefit in term of money, the Labour Court inevitably has to deal with the question as to whether the workman has a right to receive that benefit. If the said right is not disputed, nothing more needs to be done and the Labour Court can proceed to compute the value of the benefit in terms of money; but if the said right is disputed, the Labour Court must deal with that question and decide whether the workman has the right to receive the benefit as alleged by him and it is only if the Labour Court answers this point in favour of the workman that the next question of making the necessary computation can arise. It seems to us that the opening clause of sub-section (2) does not admit of the construction for which the appellant contends unless we add some words in that clause. The clause "Where any workman is entitled to receive from the employer any benefit" does not mean "where such workman is admittedly, or admitted to be, entitled to receive such benefit". The appellant's construction would necessarily introduce the addition of the words "admittedly, or admitted to be" in that clause, and that clearly is not permissible. Besides, it seems to us that if the appellant's construction is accepted, it would necessarily mean that it would be at the option of the employer to allow the workman to avail himself of the remedy provided by sub-section (2), because he has merely to raise an objection on the ground that the right claimed by the workman is not admitted to oust the jurisdiction of the Labour Court to entertain the workman's application. The claim under Section 33-C(2) clearly postulates that the determination of the question about computing the benefit in terms of money may, in some cases, have to be preceded by an enquiry into the existence of the right and such an enquiry must be held to be incidental to the main determination which has been



assigned to the Labour Court by sub-section (2). As Maxwell has observed “where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution [Maxwell on Interpretation of Statutes p. 350] ”. We must accordingly hold that Section 33-C(2) takes within its purview cases of workmen who claimed that the benefit to which they are entitled should be computed in terms of money, even though the right to the benefit on which their claim is based is disputed by their employers. Incidentally, it may be relevant to add that it would be somewhat odd that under sub-section (3), the Labour Court should have been authorised to delegate the work of computing the money value of the benefit to the Commissioner if the determination of the said question was the only task assigned to the Labour Court under sub-section (2). On the other hand, sub-section 3 becomes intelligible if it is held that what can be assigned to the Commissioner includes only a part of the assignment of the Labour Court under sub-section (2).

17. It is, however, urged that in dealing with the question about the existence of a right set up by the workman, the Labour Court would necessarily have to interpret the award or settlement on which the right is based, and that cannot be within its jurisdiction under Section 33-C(2), because interpretation of awards or settlements has been specifically and expressly provided for by Section 36-A. We have already noticed that Section 36-A has also been added by the amending Act 36 of 1956 along with Section 33-C, and the appellant's argument is that the legislature introduced the two sections together and thereby indicated that questions of interpretation fall within Section 36-A and, therefore, outside Section 33-C(2). There is no force in this contention. Section 36-A merely provides for the interpretation of any provision of an award or settlement where any difficulty or doubt arises as to the said interpretation. Generally, this power is invoked when the employer and his employees are not agreed as to the interpretation of any award or settlement, and the appropriate Government is satisfied that



a defect or doubt has arisen in regard to any provision in the award or settlement. Sometimes, cases may arise where the awards or settlements are obscure, ambiguous or otherwise present difficulty in construction. It is in such cases that Section 36-A can be invoked by the parties by moving the appropriate Government to make the necessary reference under it. Experience showed that where awards or settlements were defective in the manner just indicated, there was no remedy available to the parties to have their doubts or difficulties resolved and that remedy is now provided by Section 36-A. But the scope of Section 36-A is different from the scope of Section 33-C(2), because Section 36-A is not concerned with the implementation or execution of the award at all, whereas that is the sole purpose of Section 33-C(2). Whereas Section 33-C(2) deals with cases of implementation of individual rights of workmen falling under its provisions, Section 36-A deals merely with a question of interpretation of the award where a dispute arises in that behalf between the workmen and the employer and the appropriate Government is satisfied that the dispute deserves to be resolved by reference under Section 36-A.

18. Besides, there can be no doubt that when the Labour Court is given the power to allow an individual workman to execute or implement his existing individual rights, it is virtually exercising execution powers in some cases, and it is well settled that it is open to the executing court to interpret the decree for the purpose of execution. It is, of course true that the executing court cannot go behind the decree, nor can it add to or subtract from the provision of the decree. These limitations apply also to the Labour Court; but like the executing court, the Labour Court would also be competent to interpret the award or settlement on which a workman bases his claim under Section 33-C(2). Therefore, we feel no difficulty in holding that for the purpose of making the necessary determination under Section 33-C(2), it would, in appropriate cases, be open to the Labour Court to interpret the award or settlement on which the workman's right rests.



19. We have already noticed that in enacting Section 33-C the legislature has deliberately omitted some words which occurred in Section 20(2) of the Industrial Disputes (Appellate Tribunal) Act, 1950. It is remarkable that similar words of limitation have been used in Section 33-C(1) because Section 33-C(1) deals with cases where any money is due under a settlement or an award or under the provisions of Chapter V-A. It is thus clear that claims made under Section 33-C(1), by itself can be only claims referable to the settlement, award, or the relevant provisions of Chapter V-A. These words of limitations are not to be found in Section 33-C(2) and to that extent, the scope of Section 33-C(2) is undoubtedly wider than that of Section 33-C(1). It is true that even in respect of the larger class of cases which fall under Section 33-C(2), after the determination is made by the Labour Court the execution goes back again to Section 33-C(1). That is why Section 33-C(2) expressly provides that the amount so determined may be recovered as provided for in sub-section (1). It is unnecessary in the present appeals either to state exhaustively or even to indicate broadly what other categories of claims can fall under Section 33-C(2). There is no doubt that the three categories of claims mentioned in Section 33-C(1) fall under Section 33-C(2) and in that sense, Section 33-C(2) can itself be deemed to be a kind of execution proceeding; but it is possible that claims not based on settlements, awards or made under the provisions of Chapter V-A, may also be competent under Section 33-C(2) and that may illustrate its wider scope. We would, however, like to indicate some of the claims which would not fall under Section 33-C(2), because they formed the subject-matter of the appeals which have been grouped together for our decision along with the appeals with which we are dealing at present. If an employee is dismissed or demoted and it is his case that the dismissal or demotion is wrongful, it would not be open to him to make a claim for the recovery of his salary or wages under Section 33-C(2). His demotion or dismissal may give rise to an industrial dispute which may be appropriately tried, but



once it is shown that the employer has dismissed or demoted him, a claim that the dismissal or demotion is unlawful and, therefore, the employee continues to be the workman of the employer and is entitled to the benefits due to him under a pre-existing contract, cannot be made under Section 33-C(2). If a settlement has been duly reached between the employer and his employees and it falls under Section 18(2) or (3) of the Act and is governed by Section 19(2), it would not be open to an employee, notwithstanding the said settlement, to claim the benefit as though the said settlement had come to an end. If the settlement exists and continues to be operative, no claim can be made under Section 33-C(2) inconsistent with the said settlement. If the settlement is intended to be terminated, proper steps may have to be taken in that behalf and a dispute that may arise thereafter may to be dealt with according to the other procedure prescribed by the Act. Thus, our conclusion is that the scope of Section 33-C(2) is wider than Section 33-C(1) and cannot be wholly assimilated with it, though for obvious reasons, we do not propose to decide or indicate what additional cases would fall under Section 33-C(2) which may not fall under Section 33-C(1). In this connection, we may incidentally state that the observations made by this Court in the case of Punjab National Bank Ltd. [1962 (1) LLJ 234] that Section 33-C is a provision in the nature of execution should not be interpreted to mean that the scope of Section 33-C(2) is exactly the same as Section 33-C(1) (p. 238).....”

63. The Hon’ble Supreme Court in **Punjab National Bank Ltd. v. K.L. Kharbanda**,² drew a distinction between the applicability of Section 33C(1) and Section 33C(2) of the I.D Act. The relevant paragraphs are reproduced herein below:

² 1962 Supp (2) SCR 977



“.....7. The first question therefore that falls for decision is whether such an application can be made under Section 33-C(2) of the Act. Section 33-C(2) reads as follows:

“33-C. (2) Where any workman is entitled to receive from the employer any benefit which is capable of being computed in terms of money, the amount at which such benefit should be computed may subject to any rules that may be made under this Act, be determined by such Labour Court as may be specified in this behalf by the appropriate Government, and the amount so determined may be recovered as provided for in sub-section (1).”

It is contended on behalf of the appellant that Section 33-C(2) deals only with such cases where the workman is entitled to receive from the employer any benefit which is non-monetary but which could be computed in terms of money. It said that it is only in such a case where the workman claims a non-monetary benefit from his employer that he can apply to the Labour Court for converting the value of this non-monetary benefit into money and computing the amount due in terms of money. On the other hand, it has been contended on behalf of the respondent that the benefit to which a workman may be entitled need not necessarily be non-monetary and that any benefit to which he is entitled under an award if requires computation can be the subject-matter of an application under Section 33-C(2). Reliance has been placed on behalf of the respondent in the connection on a course of decisions by the Industrial Tribunals and the High Courts where the meaning of the word “benefit” in sub-section (2) has not been confined to non-monetary benefits only.

8. The crucial words which we have to interpret are “any benefit which is capable of being computed in terms of money”. The “benefit” is of wide import, and the dictionary meaning thereof is “advantage, profit”. This would naturally include monetary advantage or monetary profit. There is no reason therefore for excluding “monetary benefits” from the word “benefit” used this sub-section, unless it is clear from



the words used that monetary benefits were not intended to be included in the wide word “benefit” used therein. It urged on behalf of the appellant that we should exclude monetary benefits from the meaning of this word in the context of this sub-section because the word qualified by the words “which is capable of being computed in terms of money”. This, it is urged, suggests that the meaning of the word “benefit” here excludes monetary benefits, for, according to the appellant, there would be no sense in computing monetary benefits in terms of money. But this contention overlooks the fact that the word used in the qualifying clause is “computed” and not “converted”. If the word had been “converted” and the clause had read “which is capable of being converted in terms of money” there would have been a clear indication that the benefit which was to be converted in terms of money was other than monetary benefit. The dictionary meaning of the word “convert” is “to change by substituting an equivalent”; and if the word “convert” had been used in the qualifying words, the argument that the word “benefit” only means non-monetary benefit might be incontrovertible. But the word in the qualifying clause is “computed” and the dictionary meaning of the word “compute” is merely “to calculate”. Therefore, where the benefit to which a workman may be entitled has not already been calculated, for example, in an award which confers on him the benefit, it stands to reason that sub-section 2 would apply for computation of such benefit if there is dispute about it. Further, if we compare sub-section (1) with sub-section (2) of this section, it will appear that sub-section (1) applies to cases 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 and that contemplates that the amount is already computed or calculated or at any rate there can be no dispute about the computation or calculation while sub-section (2) applies to cases where though the monetary benefit has been conferred on a workman under an award, it has not been calculated or computed in the award itself, and there is dispute as to its calculation or



computation. It cannot therefore be said looking to the words used in sub-section (2) that it only applies to cases of non-monetary benefit which has to be converted in terms of money. It appears to us that it can also apply to monetary benefits to which a workman may be entitled which have not been calculated or computed say, for example, in an award and about their calculation or computation there is dispute between the workman and the employer. It may be added that Section 33-C was put in the Act for the purposes of execution in 1956 after the Industrial Disputes (Appellate Tribunal) Act, (48 of 1950) was repealed in that year. The Appellate Tribunal Act contained Section 20 which provided for execution of awards and was in terms almost similar to Section 33-C. When the Appellate Tribunal Act was repealed in 1956 a provision similar to that contained in Section 20 was brought into the Act at the same time. It is clear therefore that Section 33-C is a provision in the nature of execution and where the amount to be executed is worked out (for example in an award) or where it may be worked out without any dispute, Section 33-C(1) will apply. But where the amount due to a workman is not stated in the award itself and there is a dispute as to its calculation, sub-section (2) will apply and the workman would be entitled to apply thereunder to have the amount computed provided he is entitled to a benefit, whether monetary or non-monetary, which is capable of being computed in terms of money.

9. This matter had come up before the Labour Appellate Tribunal in 1955 in Glaxo Laboratories (India) Limited, Bombay v. Shri A.Y. Manjrekar [(1955) LAC 505] . The Appellate Tribunal took the view that Section 20 of the Appellate Tribunal Act was concerned purely with execution and there was no reason to hold that sub-section (2) only applied to non-monetary benefits. The same view was taken by the Madras High Court in South Arcot Electricity Distribution Company Limited v. Elumalai [(1959) 1 LLJ 624] by a learned Single Judge and again by the same High Court in M.S.N.S. Transports, Tiruchirapalli v. Rajaram (K) [(1960) 1 LLJ 336] by a Division Bench. Looking



therefore to the words of the sub-section and the previous decisions with respect to them we are of opinion that the word “benefit” used in sub-section (2) is not confined merely to non-monetary benefit which could be converted in terms of money but is concerned with all kinds of benefits, whether monetary or non-monetary, to which a workman may be entitled, say, for example, under an award and that the sub-section comes into play when the benefits have to be computed or calculated and there is a dispute as to the calculation or computation. After the benefits have been so computed, the workman can apply under sub-section (1) for recovery of the amount in the same manner as arrears of land-revenue. As in this case, the Sastry Award had conferred a benefit on the respondent and those like him by providing for fixation of pay in the new scale, even though that benefit may be monetary and there was a dispute between the parties as to the amount of that benefit, it was open to the respondent to apply to the Labour Court for computation of that benefit in terms of money, and the Labour Court would have jurisdiction to entertain the application and compute the amount due on the basis of the benefit conferred by the award.....”

64. The Hon’ble Supreme Court in ***Fabril Gasosa v. Labour Commr.***,³ reiterated the distinction between the applicability of Section 33C(1) and Section 33C(2) of the I.D Act and expounded upon as to which sub-section is a more appropriate remedy for the recovery of dues. The relevant paragraphs of the same are reproduced herein below:

“.....15. Coming now to the second submission of the learned counsel for the appellants regarding the maintainability of the application under Section 33-C(1) of the Act, according to the learned counsel for the appellants, the obligations which flow from the 1986 settlement, after the expiry of the period of settlement, could be examined

³ (1997) 3 SCC 150



only through a reference under Section 10(1) of the Act or by the labour court under Section 33-C(2) of the Act and recourse to the provisions of Section 33-C(1) of the Act was not permissible. According to the learned counsel for the respondent on the other hand, the claim for money due, which only was required to be calculated and not determined, could be made under Section 33-C(1) of the Act and the workmen were not obliged to take recourse to either Section 10(1) or Section 33-C(2) of the Act.

16. To appreciate the submission of the learned counsel for the parties, it would be advantageous at this stage to notice Sections 33-C(1) and (2) of the Act to the extent relevant. Those provisions read thus:

“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:

(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:



(3) to (5)***”

17. In the instant case the period of earlier settlement of 1986 had expired but the expiry of that period would not affect the enforcement of the binding obligations flowing from the earlier settlement till substituted by a fresh settlement. The obligations arising from the earlier settlement would continue to remain in force, though as a contract and not as a binding settlement, but that would make no difference to the maintainability of a claim petition under Section 33-C(1) of the Act so long as the requirements of that sub-section are satisfied and the obligations sought to be enforced flow from an earlier settlement or an award or under Chapter V-A or V-B of the Act.

18. That the rate of VDA had been agreed to and provided for in the 1986 settlement is not in dispute. It is also not in dispute that the claim petition filed by the employees' union under Section 33-C(1) of the Act was for the recovery of the VDA at the rate agreed to between the parties as per the terms of the 1986 settlement for the period for which the same had been withheld by the employer. Thus, both the rate of VDA and the period for which it was payable were not in dispute. Could the employees' union, therefore, not maintain an application under Section 33-C(1) of the Act for the recovery of the VDA arrears?

19. Section 33-C is in the nature of execution proceedings designed to recover the dues to the workmen. Vide Sections 33-C(1) and (2), the legislature has provided a speedy remedy to the workmen to have the benefits of a settlement or award which are due to them and are capable of being computed in terms of money, be recovered through the proceedings under those sub-sections. The distinction between sub-section (1) and sub-section (2) of Section 33-C lies mainly in the procedural aspect and not with any substantive rights of workmen as conferred by these two sub-sections. Sub-section (1) comes into play when on the application of a workman himself or any other person assigned by him in writing in this behalf or his assignee or



heirs in case of his death, the appropriate Government is satisfied that the amounts so claimed are due and payable to that workman. On that satisfaction being arrived at, the Government can initiate action under this sub-section for recovery of the amount provided the amount is a determined one and requires no “adjudication”. The appropriate Government does not have the power to determine the amount due to any workman under sub-section (1) and that determination can only be done by the labour court under sub-section (2) or in a reference under Section 10(1) of the Act. Even after the determination is made by the labour court under sub-section (2) the amount so determined by the labour court, can be recovered through the summary and speedy procedure provided by sub-section (1). Sub-section (1) does not control or affect the ambit and operation of sub-section (2) which is wider in scope than sub-section (1). Besides the rights conferred under Section 33-C(2) exist in addition to any other mode of recovery which the workman has under the law. An analysis of the scheme of Sections 33-C(1) and 33-C(2) shows that the difference between the two sub-sections is quite obvious. While the former sub-section deals with cases where money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or V-B, sub-section (2) deals with cases where a workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money. Thus, where the amount due to the workmen, flowing from the obligations under a settlement, is predetermined and ascertained or can be arrived at by any arithmetical calculation or simpliciter verification and the only inquiry that is required to be made is whether it is due to the workmen or not, recourse to the summary proceedings under Section 33-C(1) of the Act is not only appropriate but also desirable to prevent harassment to the workmen. Sub-section (1) of Section 33-C entitles the workmen to apply to the appropriate Government for issuance of a certificate of recovery for any money due to them under an award or a settlement or under the provisions



of Chapter V-A and the Government, if satisfied, that a specific sum is due to the workmen, is obliged to issue a certificate for the recovery of the amount due. After the requisite certificate is issued by the Government to the Collector, the Collector is under a statutory duty to recover the amounts due under the certificate issued to him. The procedure is aimed at providing a speedy, cheap and summary manner of recovery of the amount due, which the employer has wrongfully withheld. It, therefore, follows that where money due is on the basis of some amount predetermined like the VDA, the rate of which stands determined in terms of the settlement, an award or under Chapter V-A or V-B, and the period for which the arrears are claimed is also known, the case would be covered by sub-section (1) as only a calculation of the amount is required to be made.....”

65. Furthermore, the Hon’ble Supreme Court in one of its recent judgement passed in ***Bombay Chemical Industries v. Labour Commr.***,⁴ again reiterated the settled position of law with regard to the maintainability of certain claims in an application filed under Section 33C(2) of the I.D Act. The relevant paragraphs of the said judgment are reproduced herein below:

“.....7. At the outset it is required to be noted that Respondent 2 herein filed an application before the Labour Court under Section 33-C(2) of the Industrial Disputes Act, demanding difference of wages from 1-4-2006 to 31-3-2012. It was thus the case on behalf of Respondent 2 that he was working with the appellant as a salesman. However, the appellant had taken a categorical stand that Respondent 2 was never engaged by the appellant. It was specifically the case on behalf of the appellant that Respondent 2 had never worked in the establishment in the post of salesman.

⁴ (2022) 5 SCC 629



Therefore, once there was a serious dispute that Respondent 2 had worked as an employee of the appellant and there was a very serious dispute raised by the appellant that Respondent 2 was not in employment as a salesman as claimed by Respondent 2, thereafter, it was not open for the Labour Court to entertain disputed questions and adjudicate upon the employer-employee relationship between the appellant and Respondent 2.

8. As per the settled proposition of law, in an application under Section 33-C(2) of the Industrial Disputes Act, the Labour Court has no jurisdiction and cannot adjudicate dispute of entitlement or the basis of the claim of workmen. It can only interpret the award or settlement on which the claim is based. As held by this Court in Ganesh Razak [MCD v. Ganesh Razak, (1995) 1 SCC 235 : 1995 SCC (L&S) 296] , the Labour Court's jurisdiction under Section 33-C(2) of the Industrial Disputes Act is like that of an executing court. As per the settled proposition of law without prior adjudication or recognition of the disputed claim of the workmen, proceedings for computation of the arrears of wages and/or difference of wages claimed by the workmen shall not be maintainable under Section 33-C(2) of the Industrial Disputes Act. [See MCD v. Ganesh Razak [MCD v. Ganesh Razak, (1995) 1 SCC 235 : 1995 SCC (L&S) 296] .]

9. In Kankuben [Union of India v. Kankuben, (2006) 9 SCC 292 : 2006 SCC (L&S) 1700] , it is observed and held that 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 the Labour Court under Section 33-C(2) of the ID Act. It is further observed that the benefit sought to be enforced under Section 33-C(2) of the ID 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 the



jurisdiction of the Labour Court exercising powers under Section 33-C(2) of the ID Act while the latter does not.....”

66. Upon perusal of the foregoing judicial dictum it can be inferred that Section 33C of I.D Act, provides for recovery provisions and while construing the same it shall be borne in mind that the dispute capable of being adjudicated under Section 10(1) of the I.D Act shall not be brought within its ambit as the legislative intent behind the said provision was to provide for a speedy remedy for execution of rights and entitlements of the workman capable of being computed in terms of money.

67. The Hon’ble Supreme Court further observed that upon a fair and reasonable construction, and comparison of Section 33C(1), and 33C(2) of the I.D Act, it can be made out that the former is applicable to matters wherein any money is due to a workman from an employer under a settlement or an award thereby contemplating that the said amount is predetermined/already computed and there does not exists any dispute about the quantum of the said computation. On the contrary the Hon’ble Supreme Court held that Section 33C(2) of the I.D Act, applies to disputes wherein, even though monetary benefits have been granted to a workman under an award, however, it has not been calculated or computed in the award itself, and there is dispute as to its calculation or computation.

68. It has also been held by the Hon’ble Supreme Court that the applicability of Section 33C(1) of the I.D Act is attracted when the appropriate government is satisfied with the amount so claimed by the workman is due and payable to him, however, the appropriate government is precluded from determining the amount due to the



workman since the prerogative of determining the same falls under the ambit of 33C(2) of the I.D Act.

69. The Hon'ble Supreme Court further opined that a careful examination of the scheme of Sections 33C(1) and 33C(2) of the I.D Act postulates the obvious distinction created by the legislature between the two sub-clauses, since, the former caters to cases wherein money is due to a workman from an employer under a settlement or an award, whereas, the latter deals with instances where the workman is entitled to receive from the employer any money or any pre-existing benefit which is capable of being computed in terms of money.

70. The judgment mentioned herein above further enunciated that the Labour Court while adjudicating upon an application under Section 33C(2) of I.D Act does not have the jurisdiction to adjudicate upon the dispute of entitlement or the basis of the claim of a workman and it is only permitted to interpret the terms of the award or settlement on which the said claim is embedded as its jurisdiction under the said sub-section is similar to that of a Court of execution.

71. In light of the foregoing discussions, the settled position of law and upon perusal of the averments made by the learned counsel for the parties, this Court is of the considered view that the legislative intent and the difference between Section 33C(1) and 33C(2) of the I.D Act, is very clear and deliberate as both sub-clauses have been provided for in the Act to cater to two different types of recovery.

72. It is observed by this Court that Section 33C(2) of the I.D Act clearly provides for the remedy to a workman to approach the Labour Court with regard to matters wherein the workman is entitled to receive,



from his employer, any benefit which could be computed in terms of monetary benefits and the same has been denied to him. It is further observed that in terms of the explicit provisions provided under the abovesaid Section, the benefit being sought shall be a pre-existing benefit emanating from a pre-existing right.

73. Contrary to the provision discussed herein above, recovery proceeding under Section 33C(1) of the I.D Act can be instituted wherein the monetary benefits flowing from an award or a settlement due to the workman is predetermined and can be arrived at by a simpliciter verification and the only inquiry that is required to be made is whether the same is due to the workman or not.

74. Now adverting to the fact of the instant petition.

75. The Ministry of Labour *vide* order dated 14th December, 1993, had referred the industrial dispute between the petitioner FCI and the respondent Union before the learned CGIT wherein, the learned CGIT passed the Award dated 6th March, 2000, observing to the effect that both the classes i.e., general and canteen employees of the petitioner FCI are distinct and the discrimination alleged could not be proved. It was also held by the Court that the canteen employees are not entitled to the grant of pay scale allowances and service benefits under the principle of equal pay for equal work. The Court further observed that due to the departmental canteen employees and the FCI canteen employees represented by the respondent Union performing duties of similar nature, the respondent Union is entitled to grant of pay scale allowances and service benefits at par with the Central Government departmental canteen employees.



76. Meanwhile, the petitioner FCI alleges to have made several efforts to implement the CGIT Award in totality however, to the contrary, the respondent Union alleges that the employees represented by it have not received the benefits due to them in terms of the CGIT Award.

77. It has been asserted that the respondent Union entered into a MOS dated 14th January, 2009, with the petitioner FCI, wherein, it was agreed upon between the parties that the CGIT Award has been implemented in full and all the grievances of the respondent Union with regard to the same stands amicably settled. Pursuant to the above, the petitioner Union *vide* letter dated 14th January, 2009, informed the learned RLC and the ED's General Manager of various zones that all the pending disputes between the parties have been settled in terms of the MOS.

78. Subsequently, in the year 2013, the respondent Union filed an application under Section 33C(1) of the I.D Act before the learned RLC seeking recovery of dues amounting to Rs.4,43,57,629/- as per the CGIT Award. Pursuant to the same, the learned RLC *vide* order dated 24th June, 2014, rendered its decision holding that the MOS arrived at between the parties cannot be construed to be valid as both the parties failed to comply with the statutory mandate prescribed under Rule 58(4) of the I.D Rules and also that the execution of the MOS after the passing of the Award cannot override the binding effect of the CGIT Award on the parties.

79. Applying the settled position of law with regard to the facts of the instant matter, it may be categorically noted that the CGIT Award from which the rights/entitlements of the respondent Union emanate, only provides for directions for grant of pay allowances and benefits at an



equal footing with that of employees of central departmental canteen and as such do not stipulate any monetary amount in such regard.

80. This Court is of the view that there exists force in the preliminary contention raised by the petitioner FCI as the respondent Union had preferred an application before the learned RLC under Section 33C(1) of the I.D Act, which as discussed above is not the appropriate remedy under the relevant provisions of law, since the monetary benefit although was determined to be extended to the employees of the respondent Union but the computation of the same was yet to be carried out.

81. This Court, bearing in mind the legislative intent and the settled position of law, is of the view the application preferred by the respondent Union under Section 33C(1) of the I.D Act is not maintainable as the appropriate remedy prescribed under the law is under Section 33C(2) of the I.D Act.

CONCLUSION

82. In this backdrop, this Court is of the view that the learned RLC, while passing the impugned Orders, has exceeded the jurisdiction conferred upon it under Section 33C(1) of the I.D Act, therefore, in view of the settled position of law discussed above, there exists an error of jurisdiction which is apparent on the face of the record and the same merits the intervention of this Court under Article 226 of the Constitution.

83. In light of the forgoing observations, the impugned Order dated 24th June, 2014 and letters dated 25th September, 2014 and 25th September, 2014, passed by the Regional Labour Commissioner, are set aside and the instant petition is allowed.



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84. Accordingly, the instant petition stands disposed of along with pending applications, if any.

85. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

APRIL 30, 2024
rk/da/ryp