

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Shampa Dutt (Paul), J.

WPA 27299 of 2023

Niranjan Hazra

-vs-

The State of West Bengal and others

For the Petitioner : Mr. Lalratan Mandal.

For the State : Mr. Kushal Das.

Hearing concluded on : 12.08.2025

Judgment on : 03.09.2025

Shampa Dutt (Paul), J.:

1. The writ application has been preferred praying for direction upon the respondent authorities, more specifically the respondent no.2 herein to dispose of the application of the petitioner dated 20th April, 2018 filed under Section 33C(1) of the Industrial Disputes Act expeditiously.
2. In course of hearing, the 1st report placed by the authority concerned being the Joint Labour Commissioner-P Enforcement of

Law and Minimum Wages, 2nd Office of the Labour Commissioner, Calcutta, regarding the status of the case is as follows:-

*“After perusal of the submitted documents it appeared to the then Assistant Labour Commissioner being the Enquiry Officer that the matter relates to the above said Award of Ld. Eighth Industrial Tribunal, Kolkata dated 30/10/2018 does not come under the purview of Sec. 33C (1) of the Industrial Disputes Act, 1947 **as no amount of money was specified in the said Award.** Hence the submitted Form Q-3 of the present petitioner was disposed of without taking further action.”*

3. Considering the said report, a further report was called for, wherein the Joint Labour Commissioner has stated in his (undated) report as follows:-

“In persuasion of that Award of Ld. Eighth Industrial Tribunal , Kolkata dated 30/10/2018 the present petitioner of this writ petition had submitted Form Q-3 ‘Application under sub Sec. (1) of Section 33C of the Industrial Disputes Act, 1947 for recovery of computed dues from the employer’.

*After perusal of the submitted documents it appeared to the then Assistant Labour Commissioner being the Enquiry Officer that the matter relates to the above said Award of Ld. Eighth Industrial Tribunal , Kolkata dated 30/10/2018 does not come under the purview of Sec. 33C (1) of the Industrial Disputes Act, 1947 **a no amount of money was specified/computed in the said Award.** Hence the submitted Form Q-3 of the present petitioner was disposed of without asking further action. The note sheet order of the Enquiry Officer is reproduced below to State the facts of the case: **“Instant proceedings U/S 33C (1) is not maintainable in absence of any prior computation of dues of the workman in this instant case”.***

*In the light of said note sheet order Sec. 33C(1) of the Act was mentioned in the earlier report of the Joint Labour Commissioner (P) with an aim to lay down before the Hon'ble Court **the limits of role of Labour Commissionerate Officials as has been laid down in the Act.***

It further appears that the instant matter be dealt under Sec. 33C (2) of the Industrial Disputes Act, 1947 where the power to compute any undetermined amount has been solely vested on the Ld. Labour Court.

The order of the Ld. Tribunal does not exclusively spelt out the amount due to the workman. Hence to recover such undetermined amount, the petitioner i.e. Sri Niranjan Hazra in compliance with provision under Sec. 33C (2) of the Act and Rule 74 (3) of the Rules should have first applied before the Ld. Labour Court for computation and only then he should have approached this forum with application in Form Q 3".

4. The award in this case is dated 30th January, 2018.
5. The signature dated 19.04.2022 of the petitioner appears against the order (sheet) dated 27.12.2021 but not against the final order dated 03.01.2023.
6. For assisting the discussion herein, Section 33C of the Industrial Dispute Act, as a whole is reproduced here:-

Section 33C of the Industrial Disputes Act, lays down:-

"33C. [Recovery of money due from an employer.-

(1)Where any money is due to a workman from an employer under a settlement or an award or under the provisions of [Chapter V-A or Chapter V-B], the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his

assignee or heirs may, without prejudice to any other mode of recovery, **make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due**, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2)Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and **if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government** [within a period not exceeding three months]:

[Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.]

(3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a Commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the Commissioner and other circumstances of the case.

(4)The decision of the Labour Court shall be forwarded by it to the appropriate Government

and any amount found due by the Labour Court may be recovered in the manner provided for in sub-section (1).

(5)Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen.

Explanation .-In this section "Labour Court" includes any Court constituted under any law relating to investigation and settlement of industrial disputes in force in any State.]”

7. Copy of the order sheet annexed shows the following order dated 03.01.2023, passed by the authority concerned, disposing of the application under Section 33C(1) of the Act:-

*“Instant proceedings u/s 33C(1) is not maintainable in
absence of any prior computation of dues of the
workman in this instant case.”*

8. Section 33C(1) of the Industrial Disputes Act, 1947 gives a special execution-like power to the appropriate government to recover money that is already due to a workman under an existing settlement, award, or provisions of certain chapters of the Act.
9. This Section is applied only where the amount is already determined **or is capable of being ascertained from a pre-existing award, settlement, or statutory provision and the "appropriate government" (Central or State, depending on**

jurisdiction) appoints an officer to handle the recovery process.

- 10.** The award under challenge dated 30.01.2018 passed by the Eight Industrial Tribunal directed as follows:-

“Ordered

That the case be awarded ex-parte against the O.P. Company M/s. Gontermann Piepers (India) Ltd. but without cost. The termination of the applicant Sri Niranjan Hazra from his service is declared illegal and unjustified.

The company will pay all the back wages including all other consequent benefits to the applicant with effect from 15.11.1994 to 31.12.2012, deducting the amount already paid, if any, within 1(one) month from the date of publication of this Award.

This is my AWARD.

Let a copy of this Award be sent to the Secretary, Government of West Bengal, Labour Department, New Secretariat Buildings, Kolkata - 700001 for information necessary action.

Dictated & corrected by me

Sd/

***Sd/-
Judge
Eighth Industrial Tribunal
Kolkata
30th January, 2018”***

11. **The award specified the period for which back wages was to be paid being from 15.11.1994 to 31.12.2012, on deduction of amount already paid along with consequential benefits.**
12. As per the report of the Joint Labour Commissioner, notice was issued to the company for the hearing but admittedly the company was **in liquidation** and as such none appeared on behalf of the company.
13. **The official liquidator was not informed.** Subsequently on 03.01.2023, the proceedings under Section 33C(1) of the Industrial Dispute was held to be **not maintainable in absence of any prior computation.**
14. **Section 33C(1) of the I.D. Act does not prohibit computation by the concerned authority,** as it specifically lays down that **“if the appropriate government is satisfied that any money is due, it shall issue a certificate”.**
15. **As such to be “satisfied if any money is due” the officer is at liberty to decide by way of computation (to be done by the authority concerned) what is due.**
16. **In the present case, the award specifies what is payable to the workman,** but to compute the amount as per direction in the award, the presence of the company was necessary, considering that related documents are maintained by the company, which are necessary for the computation.

17. The report/stand of the Joint Labour Commissioner to the extent that computation is to be done only by invoking Section 33C(2) of the Act by the Labour Court has no force, as a computation proceeding under Section 33C(2) of the Act become applicable if any **question arises as to the money due or** as to the amount **at which** such benefit should be computed, then, **the question may**, subject to any rules that be made under this Act, be decided by such Labour Court **as may be specified in this behalf by the appropriate government.**
18. The said provision also provides for evidence to be adduced, under Section 33C(3) of the Act.
19. **Thus, Section 33C(2) of the Act applies when “any question arises”, that is if the amount due is in dispute.**
20. As such, in the present case, an application under Section 33C(1) of the Act is maintainable, when the amount can be arrived at by the authority **on satisfaction that money is due, and the amount due (to be decided by the authority) is not in dispute, as the award specifies the dues of the workman.**
21. The contention of the Joint Labour Commissioner, that Section 33C(1) of the Act only empowers the authority to recover the amount which is already computed, is confined only to the ‘subject note’ of the Section, as the Section clearly provides for the “satisfaction of the appropriate government **if any money is due**”

which is thus to be decided (computed) by the authority concerned.

22. Rule 74 of the Act is ancillary to the provision under Section 33C of the Act and specification/computation of the amount due, by the Labour Court under Section 33C(2) of the Act, is to be applied in situations, **when question/dispute arises as to the quantum of the amount.**

23. The award in this case is an ex parte award.

24. The Government of India, Insolvency and Bankruptcy Board of India website shows that the company herein is **in liquidation since 30th April, 2021**, and as such was found absent before the authority on **27.12.2021**.

25. Section 445(3) of the Companies Act, lays down:-

“Section 445(3) Such order shall be deemed to be notice of discharge to the officers and employees of the company, except when the business of the company is continued.”

26. Once a company goes into liquidation, the official liquidator takes charge and during liquidation proceedings, it is the duty of the official liquidator to liquidate the dues on adjudication, as per rules.

27. The claim of the workman in this case, which shall include interest has to be now made before the official liquidator under Section 529 of the Companies Act, 1956.

- 28.** The company in liquidation since 30th April, 2021, was functional when the award was passed on 30.01.2018. At present, the petitioner's relief lies before the official liquidator, who shall implement the award in accordance with law, within 60 days from the date of this order.
- 29.** The petitioner is at liberty to approach the official liquidator for the reliefs prayed for herein.
- 30. The writ application stands disposed of.**
- 31.** Pending applications, if any, stands disposed of.
- 32.** Interim order, if any, stands vacated.
- 33.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)