



W.P.(MD) No.2304 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.02.2025

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

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M.Venkateswaran

... Petitioner

Vs.

1.The Chairman,
Centre for Monitoring Indian Economy Pvt. Ltd.,
HO: 11, Apple Heritage, 54-C, Andheri – Kuria Road,
Andheri (East), Mumbai-400 093.

2.The Field Information Officer,
Centre for Monitoring Indian Economy Pvt. Ltd.,
49, Aftab Arcade, TB Main Road,
Madurai-625 010.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned order dated 19.09.2023 in Claim Petition in C.P.No.11 of 2020, set aside the same and in consequence direct the Labour Court, Madurai to pass appropriate Ex-parte decree dated 17.12.2021 in pursuant to order 9, Rule 6 CPC, and Section 7 of Schedule II of Industrial Dispute Act, 1947, against the 1st respondent (Employer).



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For Petitioner : Mr.M.Muniasamy

For Respondents : No appearance

ORDER

This writ petition has been filed aggrieved by an order dated 19.09.2023 in C.P.No.11 of 2020 by the learned Labour Court at Madurai, Virudhunagar Camp.

2. The said computation petition was filed by the petitioner under Section 33C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as “the Act 1947”). It is the claim of the petitioner that he was engaged as a Contract Labour by Respondent No.1 under contract agreement dated 04.07.2013 and the said contract is available up to 04.07.2016. While so, the petitioner made a claim for regularisation of service during the year 2015 and in view of the same, the petitioner along with four others were discontinued from service on 26.02.2016 and thereafter, the petitioner made a claim for payment of damages to the tune of Rs.50,00,000/-, but the same was



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repudiated by Respondent No.1-company. In view of the same, the petitioner made a claim as stated above before the learned Labour Court by filing C.P.No.11 of 2020. The said computation petition was dismissed by the learned Labour Court holding that the proceedings under Section 33C(2) of the Act 1947 are in the nature of execution of proceedings and therefore, a petition under the said provision can be entertained only when there is a pre-existing right to the petitioner or there was already adjudication of the claim of the petitioner and an order was passed etc. Aggrieved by the said order, the petitioner approached this Court by filing the present writ petition.

3. The compensation that is being claimed by the petitioner is on the ground that his services were discontinued from 26.02.2016, though the petitioner is entitled to be continued till 04.07.2016 under the contract. If that be the case, it is for the petitioner to make appropriate claim for damages before the competent civil Court. Even otherwise, if the petitioner is to be treated as a workman governed by the provisions of the Act 1947, it is for the petitioner to challenge the said discontinuance from service either under Section 2A or under Section 10 or under other provisions of the Act 1947 and



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make a claim for back wages and compensation etc. But the petitioner, without challenging his discontinuance from service, has made a claim for compensation of Rs.65,98,000/- together with interest towards compensation/damages for the loss of employment and sufferings.

4. The law with regard to the scope of a petition under Section 33C(2) of the ID Act is well settled. The Hon'ble Apex Court in the case of ***State of Uttarpradesh and another vs. Brijpal Singh*** reported in (2005) 9 SCC 58, has been pleased to hold at Paragraph Nos.10 and 13 as under:

“10. It is well settled that the workman can proceed under Section 33-C(2) only after the Tribunal has adjudicated on a complaint under Section 33-A or on a reference under Section 10 that the order of discharge or dismissal was not justified and has set aside that order and reinstated the workman. This Court in the case of Punjab Beverages (P) Ltd. v. Suresh Chand [(1978) 2 SCC 144 : 1978 SCC (L&S) 165] held that a proceeding under Section 33-C(2) is a proceeding in the nature of execution proceeding in which the Labour Court calculates the amount of money due to a workman from



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the employer, or, if the workman is entitled to any benefit which is capable of being computed in terms of money, proceeds to compute the benefit in terms of money. Proceeding further, this Court held that the right to the money which is sought to be calculated or to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between the industrial workman, and his employer. This Court further held as follows: (SCC p. 150, para 4)

“It is not competent to the Labour Court exercising jurisdiction under Section 33-C(2) to arrogate to itself the functions of an Industrial Tribunal and entertain a claim which is not based on an existing right but which may appropriately be made the subject-matter of an industrial dispute in a reference under Section 10 of the Act.”

11. ...

12. ...

13. [Ed.: Para 13 corrected vide Official Corrigendum No. F.3/Ed.B.J./99/2005 dated 20-10-2005.]
. Thus, it is clear from the principle enunciated in the



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above decisions that the appropriate forum where question of back wages could be decided is only in a proceeding before a forum to whom a reference under Section 10 of the Act is made. Thereafter, the Labour Court, in the instant case, cannot arrogate to itself the functions of an Industrial Tribunal and entertain the claim made by the respondent herein which is not based on an existing right but which may appropriately be made the subject-matter of an industrial dispute in a reference under Section 10 of the ID Act. Therefore, the Labour Court had no jurisdiction to adjudicate the claim made by the respondent herein under Section 33-C(2) of the ID Act in an undetermined claim and until such adjudication is made by the appropriate forum, the respondent workman cannot ask the Labour Court in an application under Section 33-C(2) of the ID Act to disregard his dismissal as wrongful and on that basis to compute his wages. It is, therefore, impossible for us to accept the arguments of Mrs Shyamla Pappu that the respondent workman can file application under Section 33-C(2) for determination and payment of wages on the basis that he continues to be in service pursuant to the said order passed by the High Court in Writ Petition No. 15172 of 1987 dated



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28-10-1987. *The argument by the learned counsel for the workman has no force and is unacceptable. The Labour Court, in our opinion, has erred in allowing the application filed under Section 33-C(2) of the ID Act and ordering payment of not only the salary but also bonus to the workman although he has not attended the office of the appellants after the stay order obtained by him. The Labour Court has committed a manifest error of law in passing the order in question which was rightly impugned before the High Court and erroneously dismissed by the High Court. The High Court has also equally committed a manifest error in not considering the scope of Section 33-C(2) of the ID Act. We, therefore, have no hesitation in setting aside the order passed by the Labour Court in Misc. Case No. 11 of 1993 dated 23-8-1995 and the order dated 9-1-2002 passed by the High Court in CMWP No. 36406 of 1995 as illegal and uncalled for. We do so accordingly.*

Ed.: Para 13 corrected vide Official Corrigendum No.F.3/Ed.B.J./99/2005 dated 20.10.2005''

5. In the instant case, admittedly there is no pre-existing right that is accrued to the petitioner, nor there was any adjudication made by any



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competent forum on the claim that is being made by the petitioner. It is for the first time the petitioner made a claim in a petition filed under Section 33C(2) of the Act 1947 for payment of damages/compensation. Therefore, clearly, the petition that was filed by the petitioner under Section 33C(2) of the Act 1947 is not within the scope of Section 33C(2) of the Act 1947.

6. In the light of the above, this Court does not find any error or illegality in the impugned order passed by the learned Labour Court and accordingly, this Writ Petition is dismissed. However, it is made clear that this order or the order passed by the learned Labour Court will not come in the way of the petitioner to agitate his claims before the appropriate forum in accordance with law. There shall be no order as to costs.

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NCC : Yes/No
Index : Yes/No
Internet : Yes

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MUMMINENI SUDHEER KUMAR, J.

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