



W.P.(MD)No.3222 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD)No.3222 of 2024

S.Pandi

... Petitioner

Vs.

The Management,
Pearl Exports,
Thuvarankulam Village,
Sivagangai Main Road,
Madurai District.

... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records pertaining to the award dated 11.10.2022 passed by the Honourable Labour Court in C.P.No.32 / 2020 with respect to the issue Nos.2 and 3 and quash the same and allow the C.P.No.32 /2020 as prayed for.



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For Petitioner : Mr.K.Suresh Kumar

For Respondent : Mr.S.Sivasubramanian

ORDER

This Writ Petition has been filed by the petitioner workman aggrieved by an order dated 11.10.2022 passed in C.P.No.32 of 2020 on the file of the Court of Presiding Officer, Labour Court, Madurai.

2. In the said petition filed before the learned Labour Court, the petitioner claimed in totally an amount of Rs.4,17,000/- under different heads including the claim for payment of provident fund and gratuity to the tune of Rs.2,00,000/- and Rs.58,875/- respectively. He also further made a claim for payment of bonus of Rs.2,00,000/- and an amount of Rs.7,000/- towards notice pay and an amount of Rs.55,000/- towards closure compensation and an amount of Rs.55,000/- towards leave salary. Out of the above said amounts, the learned Labour Court has granted only closure compensation of Rs.50,000/- with 6% interest. The rest



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of the claims were rejected by the learned Labour Court on the ground that the petitioner failed to place any material in support of his claim either by way of pleadings or by way of documentary evidence. Insofar as the claim with regard to the provident fund and gratuity are concerned, the learned counsel for the petitioner submitted that the petitioner is not contesting the same in the present Writ Petition and seeks liberty to make a claim before the appropriate authorities under the relevant enactments. In view of the same, this Court is not inclined to examine the claim insofar as the payment of provident fund and gratuity and the petitioner is granted liberty to pursue the remedy otherwise available under law.

3. Insofar as the leave salary is concerned, the learned counsel appearing for the respondent submitted that the respondent is ready to pay the amount of Rs.50,000/- towards leave salary as against the claim of Rs.55,000/- made by the petitioner. As already noted above, there is no material placed before the learned Labour Court in support of the claim made by the petitioner for an amount of Rs.55,000/- towards leave salary. Further, it is also not stated as to on what basis, the petitioner has arrived at the said sum of Rs.55,000/-. In view of the



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concession made by the learned counsel appearing for the respondent offering to pay the amount of Rs.50,000/-, this Court is inclined to accept the same especially, in the absence of any supporting material placed by the petitioner for an amount of Rs.55,000/-. Hence, insofar as the claim for leave salary is concerned, no further adjudication needs to be made.

4. Similarly, as against the claim of notice pay of Rs.7,000/-, the learned counsel for the respondent has accepted to pay the said amount also without any contest. Then rest of the claim is for payment of bonus of Rs.1 lakh as claimed before the learned Labour Court. Before examining the matter on merits, it is necessary to see whether the learned Labour Court is competent to decide the entitlement of the petitioner for payment of bonus or not?.

5. The learned counsel appearing for the respondent also strenuously contested the matter on the ground of jurisdiction of learned Labour Court to consider the aspect relating to payment of bonus under the provisions of the Payment of Bonus Act, 1965. As seen from the impugned order, the learned



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Labour Court refused to grant bonus in favour of the petitioner on the ground that the petitioner failed to place appropriate material nor pleading in support of the claim made for payment of bonus to the tune of Rs.1 lakh. Even before this Court also no additional material is placed for consideration of this Court in support of the claim made for payment of bonus by the petitioner. The learned counsel appearing for the respondent placed reliance on the decisions of the Hon'ble Supreme Court in *H.P.State Electricity Board and Ors. Vs. Ranjeet Singh and Ors* reported in (2008) 4 SCC 241 as well as the orders passed by this Court in *The Management of Khilari Medical System Vs. The Presiding Officer and Ors* reported in 2024 LLR 384 and *Management of Ganesh Theatre Vs. Presiding Officer, Labour Court and Ors [W.P.No.25475 of 2002, dated 09.04.2010]* to contend that the learned Labour Court lacks jurisdiction to examine the entitlement of the petitioner for payment of bonus under the provisions of Payment of Bonus Act, 1965.

6. On the other hand, the learned counsel appearing for the petitioner contended that the petitioner is not seeking to decide the entitlement of the



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petitioner for payment of bonus but only seeking to enforce the provisions of Payment of Bonus Act, 1965 and therefore, tried to distinguish the decisions relied upon by the learned counsel appearing for the respondent and contended that the learned Labour Court is well within its power to decide the issue pertaining to bonus.

7. This Court has carefully considered the submissions made on either side and has carefully perused the decisions relied upon by the learned counsel for the respondent.

8. In the case of ***H.P.State Electricity Board and Ors. Vs. Ranjeet Singh and Ors***, reported in ***(2008) 4 SCC 241*** the Hon'ble Apex Court at paragraph 15 held as under:

“15. Further, the High Court seems to have lost sight of the fact that the Labour Court under the Act can decide only the matters specified in Second Schedule. "Bonus" is not covered by the Second Schedule. Item 6 of Second Schedule says that it deals with all matters except those covered by the Third Schedule. "Bonus" appears as Item 5



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WEB COPY *in the Third Schedule. Therefore, the question of entitlement to bonus could not have been decided by the Labour Court. In case of pre existing rights there must be agreements by both sides about existence of such rights. If there is dis-agreement this has to be decided by the competent authority. The stand that the expression 'bonus payable' relates to the quantum and not pay ability is also not correct."*

9. So also, the learned single Judge of this Court in the case of ***The Management of Khilari Medical System Vs. The Presiding Officer and Ors*** reported in **2024 LLR 384**, by placing reliance on a decision of the Hon'ble Apex Court in the case of ***H.P.State Electricity Board and Ors. Vs. Ranjeet Singh and Ors***, reported in **(2008) 4 SCC 241** came to the conclusion that the bonus is not covered under the second Schedule. Therefore, the question of entitlement of bonus could not have been decided by the learned Labour Court.

10. Similarly, in the case of ***Management of Ganesh Theatre Vs. Presiding Officer, Labour Court and Ors*** in **W.P.No.25475 of 2002**, dated **09.04.2010** another learned Single Judge of this Court has held as under:



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“6. The question that arises for consideration is whether the Labour Court is competent to adjudicate the matter raised by the workman/2nd respondent under Section 33C (2) of the Act vis-a-vis the settled legal position.

A similar issue fell for consideration before the Supreme Court in Municipal Corporation of Delhi Vs Ganesh Razak & Anr. (1995 (1) SCC 235). The ratio laid down by the Apex Court in the above said judgment clearly indicates that where the very basis of the claim or entitlement of a workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33C(2) of the Act. The Apex Court further held that the Labour Court has no jurisdiction to first decide the workman's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33C(2) of the Act. Only when the entitlement is earlier adjudicated or recognised by the employer and, thereafter, for the purpose of implementation or enforcement thereof some ambiguity requires interpretation, that interpretation is treated as incidental to the Labour Court's power under Section 33C(2) like that of the executing court's power to interpret the decree for the purpose of its execution and the Labour Court is empowered to go into the dispute with regard to the claim of any workman by entertaining a claim



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7. Admittedly, in the present case, there being no earlier adjudication or recognition of any existing right of the employee by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of proceeding under Section 33C(2) of the Act. Therefore, the 2nd respondent has to raise an industrial dispute only before the appropriate authority, which can adjudicate the matter of dispute with regard to wages. Therefore, the power of Labour Court under Section 33C(2) has to be construed that it extends only to interpret the award or settlement on which the claim is based, which means, it cannot adjudicate the fresh dispute of entitlement or basis of claim made by the workman when the same entitlement or claim was disputed by the employer.”

11. The law with regard to the scope of a petition under Section 33C(2) of the Industrial Disputes Act, 1947 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



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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 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. ...



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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 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 28-10-1987. The argument by



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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”

12. The Hon'ble Apex Court in its decision in ***H.P.State Electricity Board and Ors. Vs. Ranjeet Singh and Ors***, reported in ***(2008) 4 SCC 241*** has been pleased to hold that the bonus is not the one that would come within the scope and ambit of the learned Labour Court and the same was specifically excluded.



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The Hon'ble Apex Court has come to such a conclusion considering the fact that the specific authorities are prescribed under the provisions of the Payment of Bonus Act, 1965 to deal with the compliance of non payment of bonus etc.

13. In the light of the law laid down by the Hon'ble Apex Court, this Court is of the considered view that the learned Labour Court is devoid of its power to deal with the claim made by the petitioner for payment of bonus to the tune of Rs.1 lakh. In the light of the above, this Court does not find any merit in the claim made by the petitioner for payment of bonus in a petition filed under Section 33C(2) of the Industrial Disputes Act, 1947. In case, if the petitioner has got any sustainable claim for payment of bonus, against the respondent, it is always open for the petitioner to take appropriate steps under the provisions of Payment of Bonus Act, 1965 in accordance with law.

14. In the light of the above, this Court is not inclined to consider the claim of the petitioner for payment of provident fund, gratuity and bonus. Insofar as the claim for leave salary and the notice pay are concerned, having



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taken into consideration the concession made by the learned counsel appearing for the respondent, this Writ Petition is disposed of directing the respondent to pay an amount of Rs.50,000/- towards closure compensation, Rs.50,000/- towards leave salary and Rs.7,000/- towards notice pay in total Rs.1,07,000/- with interest at the rate of 6% with effect from 11.12.2022 till the date of actual payment. The petitioner is directed to furnish the relevant bank details to enable the respondent to remit the amounts as directed under this order.

15. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs.

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Neutral Citation: Yes / No
Index : Yes / No

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