



W.P.(MD) No.23128 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved On 26.02.2025	Orders Pronounced On 30.04.2025
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CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) No.23128 of 2017

K.Chelladurai

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Thiruchirapalli.

2.The Management of R.1607,
Sri Vinayagamoorthy Primary
Agricultural Co-operative Bank Ltd.,
(Now renamed as R.1607,
Sri Vinayagamoorthy Primary
Agricultural Co-operative Credit Society Ltd.,)
Kulumani, Trichy.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus, to call for the records from the 1st respondent Labour Court relating to the impugned order dated 22.09.2016 of the 1st respondent in C.P.No.1/2012, quash the same and consequently to direct the 2nd respondent to pay the petitioner Rs.7,14,180/-



W.P.(MD) No.23128 of 2017

WEB COPY

as petitioner's claims towards back wages for the period from 25.01.2007 to 31.10.2011 and also towards bonus ex-gratia and encashment of earned leave days for the period from 2005 to 2010, together with 18% interest p.a., without affecting his right to claim wages and other benefits against the 2nd respondent for the subsequent period after 31.10.2011, award cost.

For Petitioner : Mr.S.Arunachalam

For Respondents : Mr.D.Shanmugarajasethupathi – for R2

: R1 – Labour Court

ORDER

1.1. The brief facts that are relevant for the disposal of this writ petition are as under:

1.2. The petitioner herein while working in the second respondent-Coop Bank was subjected to disciplinary proceedings and was dismissed from service by an order dated 29.02.2008. Aggrieved by the said order, the petitioner filed an appeal under Section 41 of the Tamil Nadu Shops and Establishments Act, 1947 (hereinafter referred to as “the Act, 1947”) before the Deputy Commissioner of Labour, Trichy in TNSE No.



W.P.(MD) No.23128 of 2017

WEB COPY

1/2010. The said appeal was allowed by the appellate authority by an order dated 31.03.2011 cancelling the order of dismissal. It was thereafter, the petitioner filed a claim petition under Section 33C(2) of Industrial Disputes Act, 1947 (hereinafter referred to as “the I.D. Act”) before the learned Labour Court, Tiruchirappalli claiming for an amount of Rs.7,14,810/- for the backwages from 25.01.2007 till 31.10.2011 and under various other heads. The said claim of the petitioner was entertained by the learned Labour Court and by an order dated 22.09.2016, the learned Labour Court awarded an amount of Rs.3,92,117/- towards salary from 31.03.2011 till 31.10.2014, i.e., from the date of passing of the order under Section 41 of the Act, 1947 and till the date of the petitioner attaining the age of superannuation. The claim of the petitioner for the backwages from 25.01.2007, that is the date on which the petitioner was placed under suspension till 31.10.2011 is concerned, the same was rejected by the learned Labour Court. It is aggrieved by the said order, rejecting the claim of the petitioner for payment of backwages for the period from 25.01.2007 to 31.10.2011, the present writ petition has been filed.



W.P.(MD) No.23128 of 2017

WEB COPY

2. Heard Mr.S.Arunachalam, learned counsel for the petitioner and Mr.D.Shanmugarajasethupathi, learned counsel for the Respondent No. 2.

3. After hearing the learned counsel on either side at length, on the facts and circumstances of the case, the only question that would arise before this Court for consideration is as to whether the petition filed under Section 33C(2) of the I.D. Act is maintainable in the absence of any pre-existing right or an order entitling the petitioner for such benefit?

4. In the instant case, the appellate authority under Section 41 of the Act, 1947, while cancelling the order of dismissal passed against the petitioner herein has not passed any consequential order either directing for payment of backwages or otherwise. In the absence of any such direction for payment of backwages or declaration entitling the petitioner for any such backwages and whether the petitioner is entitled to claim for backwages from the date of suspension till the date of order passed by the appellate authority, is also required to be examined in this writ petition,



W.P.(MD) No.23128 of 2017

WEB COPY

besides examining maintainability of an application under Section 33C(2) of the Act, 1947 in the absence of any pre-existing or crystallised right.

5. The learned counsel on either side placed reliance on various decisions.

6. A learned Division Bench of this Court in the case of ***Murugesu Mudaliar (C.) vs. S.U.S. Davey Sons, Madras and another*** [***W.A.No.77 of 1962***, dated ***03.12.1963***], considered the very same aspect and held that the scope of Section 33C(2) of the I.D.Act was coextensive or identical with the scope of Section 33C(1) of the I.D.Act. However, the learned Division Bench taking into consideration the concession made by the learned counsel for the appellant-employer therein, came to the conclusion that the learned Labour Court would have jurisdiction to proceed into the question of the right of the appellant to the backwages claimed, provided the benefit is capable of being computed in terms of money. As the said decision was rendered basing upon a concession or concedement of the learned counsel appearing for the employer therein, in the considered



W.P.(MD) No.23128 of 2017

WEB COPY

view of this Court, the same cannot be considered as a precedent having binding nature on this Court.

7. Yet another decision relied upon by the learned counsel for the petitioner in the case of ***T.N.State Transport Corporation vs. Neethivilangan, Kumbakonam*** reported in ***(2001) 9 SCC 99*** is a case of rejection of an approval petition filed under Section 33(2)(b) of the I.D.Act resulting in invalidating the order of dismissal and the entitlement of the workman therein for wages and other consequential benefits from the date of order of dismissal till the date of reinstatement. In that case, it was held that the order of dismissal comes into effect de facto on the date of passing of the order of dismissal and the same would come into force and de jure on granting of approval under Section 33(2)(b) of the I.D.Act. In case of rejection of approval petition under Section 33(2)(b), the order of dismissal becomes non-existent. In the case on hand, the order of dismissal, came into force and the same was only cancelled on appeal filed by the petitioner under Section 41 of the Act, 1947. The appellate authority while dealing with the appeal filed by the petitioner except cancelling the order of



W.P.(MD) No.23128 of 2017

WEB COPY

dismissal, has not passed any further order either way.

8.1. In this connection, it would be relevant to refer to various decisions of the Hon'ble Apex Court dealing with the very same aspect of the matter.

8.2. In ***State of U.P. vs. Brijpal Singh*** reported in (2005) 8 SCC 58, the Hon'ble Apex Court held 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 the employer, or, if the workman is entitled to any benefit which is capable of being computed in terms of money, proceeds to compute



WEB COPY



W.P.(MD) No.23128 of 2017

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.””

8.3. So also, in the case of ***State Bank of India vs. Ram Chandra Dubey and others*** reported in ***(2001) 1 SCC 73***, the Hon'ble Apex Court held as under:

“7. When a reference is made to an Industrial Tribunal to adjudicate the question not only as to whether the termination of a workman is justified or not but to grant appropriate relief, it would consist of examination of



the question whether the reinstatement should be with full or partial back wages or none. Such a question is one of fact depending upon the evidence to be produced before the Tribunal. If after the termination of the employment, the workman is gainfully employed elsewhere it is one of the factors to be considered in determining whether or not reinstatement should be with full back wages or with continuity of employment. Such questions can be appropriately examined only in a reference. When a reference is made under Section 10 of the Act, all incidental questions arising thereto can be determined by the Tribunal and in this particular case, a specific question has been referred to the Tribunal as to the nature of relief to be granted to the workmen.

8. The principles enunciated in the decisions referred by either side can be summed up as follows:

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 Labour Court under Section 33-C(2) of the Act. The benefit sought to be enforced under Section 33-C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a



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W.P.(MD) No.23128 of 2017

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 jurisdiction of Labour Court exercising powers under Section 33-C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court



WEB COPY



W.P.(MD) No.23128 of 2017

ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages.”

8.4. Similarly, in the case of ***Rajasthan State Road Transport Corporation and others vs. Shyam Bihari Lal Gupta*** reported in ***2006 SCC (L & S) 67***, the Hon'ble Apex Court held as under:

“3. According to the learned counsel for the appellant Corporation, the decree is absolutely silent so far as the back wages are concerned. The decree in essence contains only a declaratory relief without any consequential payment for monetary benefits. That being so, the executing court and the High Court were not justified in granting the relief sought for. Learned counsel for the respondent on the other hand submitted that when the decree clearly indicated that the termination was illegal non est, as a natural corollary, the plaintiff was entitled to the back wages.”

9. In the light of the above, now it is well settled that, an application under Section 33C(2) of the I.D.Act is in the nature of execution



W.P.(MD) No.23128 of 2017

WEB COPY

of a pre-existing right which was already adjudicated, determined or crystallised right.

10. In the instant case, the order passed by the appellate authority under Section 41 of the Act, 1947 is totally silent with regard to the backwages. Whether an employee, who is dismissed from service is entitled for backwages on delcaring the dismissal order as invalid is a matter to be adjudicated by the appropriate forum by duly affording opportunity to both the parties and various considerations have to be taken note of. Whether such workman is gainfully employed elsewhere during the period of dismissal from service, whether the conduct of the petitioner during the period of dismissal from service and the grounds on which he was dismissed from service would entitle him for backwages or not are all matters to be considered with due application of mind. Thus, there is no pre-existing or crystallised right that accrued to the petitioner herein to claim backwages as a matter of right. This does not mean that this Court or the learned Labour Court have come to a conclusion on the aspect of entitlement or disentitlement of the petitioner to claim for backwages. But, this Court has



W.P.(MD) No.23128 of 2017

WEB COPY

come to a conclusion that the petitioner herein cannot claim backwages to the extent denied by the learned Labour Court only for want of maintainability of the application under Section 33C(2) of the I.D.Act, in the facts and circumstances of the case.

11. 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.

12. Accordingly, this Writ Petition is dismissed. However, it is made clear that it is always open for the petitioner herein to claim backwages for the period he was out of employment because of the invalid dismissal order passed by the Respondent No.2 herein before the appropriate forum in a properly instituted proceedings. There shall be no order as to costs.

30.04.2025

NCC : Yes/No
Index : Yes/No
Internet : Yes
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W.P.(MD) No.23128 of 2017

MUMMINENI SUDHEER KUMAR, J.

ABR

To

The Presiding Officer,
Labour Court, Thiruchirapalli.

Pre-delivery Order made in
W.P.(MD) No.23128 of 2017

30.04.2025