



CWP-780-1997 :1:

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

230

**CWP-780-1997 (O&M)
Date of decision : 18.02.2025**

**CHIEF ENGINEER THERMAL, GURU NANAK DEV THERMAL
PLANT, BATHINDA**

..... Petitioner

VERSUS

**THE PRESIDING OFFICER, LABOUR COURT, BHATINDA AND
ORS.**

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present :- Ms. Monica Chhibber Sharma, Advocate with
Mr. Adeep Sharma, Advocate
for the petitioner.

None for respondents No.2 and 3.

Harsimran Singh Sethi, J. (Oral)

1. Case was called out twice but nobody appeared on behalf of respondents No.2 and 3, hence, the petition is being decided.
2. Learned counsel for the petitioner argues that an application was filed by respondents No.2 and 3 before the Labour Court under Section 33C(2) of the Industrial Disputes Act, 1947 so as to claim a higher salary.
3. Learned counsel for the petitioner further argues that under Section 33C(2) of the Industrial Disputes Act, does not give a way only for the adjudication of a right, rather under the said provision, only the admitted liability can be executed whereas, in the present case, without noticing the said fact, an application filed by the workman under Section 33C(2) for



CWP-780-1997 :2:

enhancement of his wages, has been allowed which award is contrary to the settled principle of law and the same is liable to be set aside.

4. I have heard learned counsel for the petitioner and have gone through the case file with her able assistance.

5. The claim was raised by the workman for enhancement of his wages by filing an application under Section 33C(2) which is a conceded fact. Section 33C(2) of the Industrial Disputes Act is as under:-

“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] [Substituted by Act 36 of 1964, Section 19, for Section 33-C (w.e.f. 19.12.1964).] [within a period not exceeding three months:] [Inserted by Act 46 of 1982, Section 19 (w.e.f. 21.8.1984).] [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.] [Inserted by Act 46 of 1982, Section 19 (w.e.f. 21.8.1984).]”

6. A bare perusal of the above said provision would show two aspects, first being that money can be recovered from an employer which is due under a settlement or an award or any other provisions of the Industrial Disputes Act, and second being that the application under Section 33C(2) can only be made within a period of one year from the date the money became due to the workman from the employer.

7. In the present award, the claim being raised by the workman was that they were being paid lesser salaries than one of their colleague who was appointed in the year 1975. The claim was being raised that from the



CWP-780-1997 :3:

said date, their pay should have also been enhanced and brought at par with that of their equivalent to their colleague's namely, Paramjeet Singh Soni. As per the workman themselves, the said anomaly came into existence in the year 1975. The said issue has been decided by the Labour Court by adjudicating the same which is an adjudication of rights whereas, the adjudication under Section 33C(2) of 1947 Act could have only be done with respect to any in case the amount being claimed under their settlement or an award which is not the case. Hence, the claim could have only been raised by the workman under the reference under Section 10 and not under Section 33C(2) of 1947 Act which fact has been ignored by the Labour Court while adjudicating the claim of respondent No.2 and 3. Further, the claim was filed in the year 1991 with regard to an anomaly which occurred in 1975. As per the proviso to Section 33C(1), no application can be filed after an expiry of one year of cause of action and even if the same is to be filed after one year, permission has to be taken, which is missing. The Labour Court has failed to appreciate the said fact as well while pronouncing the award.

8. Even otherwise, as per under Section 33C(2), Labour Court has no jurisdiction to adjudicate a dispute of entitlement. In the present case, the workman had raised the claim that as an employee junior to them was granted a higher salary, they should have also been granted the same salary, which amounts to deciding an entitlement of an employee respondent-workman which as per the Section 33C(2) was not admissible to be adjudicated upon. Reliance can be placed upon the judgment of Hon'ble the



CWP-780-1997 :4:

Supreme Court of India in **Civil Appeal No.813 of 2022 decided on 04.02.2022 titled 'M/s Bombay Chemical Industries Vs. Deputy Labour Commissioner and another'**. The relevant paragraph 6 of the judgment is as under:-

*“6. At the outset it is required to be noted that respondent No.2 herein filed an application before the Labour Court under Section 33(C)(2) of the Industrial Disputes Act, demanding difference of wages from 01.04.2006 to 31.03.2012. It was thus the case on behalf of respondent No.2 that he was working with the appellant as a salesman. However, the appellant had taken a categorical stand that respondent No.2 was never engaged by the appellant. It was specifically the case on behalf of the appellant that respondent No.2 had never worked in the establishment in the post of salesman. Therefore, once there was a serious dispute that respondent No.2 had worked as an employee of the appellant and there was a very serious dispute raised by the appellant that respondent No.2 was not in employment as a salesman as claimed by respondent No.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 No.2. 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 the case of **Ganesh Razak and Anr.** (supra), 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 **Municipal Corporation of Delhi Vs. Ganesh Razak and Anr. (1995) 1 SCC 235**).*

*In the case of **Kankuben** (supra), 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*



CWP-780-1997

:5:

money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33C (2) of the ID Act. It is further observed that the benefit sought to be enforced under Section 33C (2) of the ID Act is necessarily a preexisting benefit or one flowing from a preexisting right. The difference between a preexisting 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 33C (2) of the ID Act while the latter does not.”

9. Keeping in view the settled principle of law noticed hereinbefore, the impugned award passed by the Labour Court cannot be upheld being perverse to the provisions of the Industrial Disputes Act as well as the settled principle of law noticed hereinbefore and thus, the same is set aside. However, the respondent-workman is given liberty to avail appropriate remedy as envisaged under law for the redressal of his grievance.

10. Pending applications, if any, also stand disposed of accordingly.

(HARSIMRAN SINGH SETHI)
JUDGE

18.02.2025

Rimpal

Whether speaking/reasoned
Whether Reportable :

Yes
No