



223(3)

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

CWP-17007-2022 (O&M)

Date of Decision : 31-07-2025

**EXECUTIVE ENGINEER PANCHAYAT RAJ PANCHAYAT
BHAWAN, SONEPAT**

.....Petitioner

VERSUS

KANTA SHARMA AND ANR.

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Saurabh Girdhar, AAG Haryana,
for the petitioner.

Mr. Samrat Malik, Advocate
for the respondent No.1-Workman.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present petition, the challenge is to the award dated 07.03.2022 passed by the Labour Court, copy of which has been appended as Annexure P-9 wherein, the benefit of salary for the period from 01.09.2016 to 02.1.2018 has been extended in favour of the respondent No.1-Workman in an application filed under Section 33-C(2) of the Industrial Disputes Act, 1947 qua the award 31.08.2016, wherein the benefit of reinstatement along with 50% of the backwages had been awarded to the respondent No.1.

2. Learned counsel for the petitioner argues that the Labour Court exceeded its jurisdiction in granting the benefit of wages for the period after award dated 31.08.2016 was passed till the date when respondent No.1 was allowed to join in the service, and that too under an application filed under

Section 33-C(2) as, only the benefit granted under an award or settlement can be executed under Section 33-C(2) and further, no benefit for which an adjudication is required to be done, can be given on an application filed under Section 33-C(2) hence, the award dated 07.03.2022 (Annexure P-9) is bad.

3. Learned counsel for the respondent No.1-Workman in support of the award dated 07.03.2022 (Annexure P-9) submits that once, an award was passed on 31.08.2016, wherein the benefit of reinstatement along with 50% of the backwages was granted to respondent No.1-Workman, the petitioner-Department was under an obligation to reinstate the respondent No.1 in service, which was not done hence, an application was filed under Section 33-C(2) for computation of the wages for the period passing of the after the award till the time she was reinstated on the ground of non-reinstatement of the respondent No.1-Workman in service by the respondent, which is causing prejudice to the respondent No.1-Workman, as she was entitled for the benefit of reinstatement as well as the wages she would have earned for the said period, if she had been reinstated as per the directions of the award dated 31.08.2016.

4. Learned counsel for the respondent No.1-Workman submits that when the aforementioned application was filed, the respondent No.1-Workman was reinstated in service and even 50% of the backwages for which she was entitled under the award dated 31.08.2016 was paid.

5. I have heard the learned counsel for the parties and have gone through the records of the present case with their able assistance.

6. The conceded position is that the award dated 07.03.2022 (Annexure P-9) has been passed on an application filed by the respondent

No.1-Workman under Section 33-C(2) of the Industrial Disputes Act, 1947 (for short ("1947 Act")). The said Section 33-C(2) is as under:-

"XXX.

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)"

7. A bare perusal of the above would show that the application under Section 33-C(2) can only be filed for implementation of the award or the settlement, i.e., whenever there is a pre-existing right the same can be executed but a fresh claim for adjudication of rights cannot be done under Section 33 of the 1947 Act.

8. In the present case, the respondent No.1-Workman under the award dated 31.08.2016 was entitled for the benefit of reinstatement and continuity of service along with 50% of the backwages upto the date of award. Concededly, the same has already been given to the respondent No.1-Workman.

9. A bare perusal of the above would show that in Paragraph No.11 and 12, following relief has been granted to the respondent No.1-Workman:-

"11. Resultantly, it is held that the applicant is entitled to get full wages to the amount of Rs.4,75,180/- @ Rs.16,730/- per month w.e.f 01.03.2016 to 28.07.2017, which comes out to be Rs.1,00,380/- and @ Rs.18,740/- per month w.e.f. 01.03.2017 to 02.11.2018, which comes to Rs.3,74,800/- along with interest @ 6%

per annum from the date of filing of application hand i.e. 20.02.2019 till the date of realization.

RELIEF

12. In view of the foregoing discussion, the present application is allowed to the effect that the respondent is direction make payment of Rs. 4,75,180/- to applicant Kanta Sharma alongwith interest @ 6% per annum w.e.f 20.02.2019 till the date of final payment, within a period of thirty days from the date of passing this order, failing which, the applicant would be entitled to get interest @ 10% per annum. File be consigned to the records. Announced in the open Court.”

10. The benefit which has been adjudicated/computed under the award impugned, and has been given to the petitioner is in regard to the period the salary after the passing of the award. The said benefit could not have been given unless and until the same had been adjudicated by dealing with the issue that whether, the respondent No.1-Workman was not reinstated despite her claim for the same. As per the settled principle of law settled by the *Hon’ble Supreme Court of India in Civil Appeal No.813 of 2022 titled “M/s Bombay Chemical Industries Vs. Deputy Labour Commissioner and anr.”*, decided on 04.02.2022, no adjudication of a claim can be done under an application filed under Section 33-C(2). The relevant paragraphs of the judgment are as under:-

“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 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."*

11. In the present case, the adjudication of claim of respondent No.1-Workman has been done by the Labour Court in an application filed under Section 33-C(2) of the 1947 Act beyond the relief given in the award dated 31.08.2016 for a period subsequent to the passing of the award dated 31.08.2016, which is not permissible under law.

12. Hence, the order dated 07.03.2022 (Annexure P-9) is set aside. However, liberty is granted to the respondent No.1-Workman to claim the

benefit of wages accrued to her in case permissible, by raising an appropriate reference before the appropriate forum.

13. Pending application, if any, also stands disposed of.

31-07-2025

Sapna Goyal

(HARSIMRAN SINGH SETHI)

JUDGE

NOTE:

Whether speaking: YES

Whether reportable: NO