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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08-04-2026

CORAM

THE HON'BLE MR JUSTICE S. M. SUBRAMANIAM

AND

THE HON'BLE MR.JUSTICE K. SURENDER

WA Nos. 2127 & 2128 of 2025

and

CMP Nos. 16108 & 16109 of 2025

W.A.No.2127 of 2025

The General Secretary
Dakshin Bharat Hindi Prachar Sabha,
Thanikachalam Road, T. Nagar,
Chennai 600 017.

..Appellant(s)

Vs

K. Ethiraj
No.2, New Boag road, Lalithapuram, T. Nagar,
Chennai 600 017.

..Respondent(s)

WA No. 2128 of 2025

The General Secretary
Dakshin Bharat Hindi Prachar Sabha,
Thanikachalam Road, T. Nagar,
Chennai 600 017.

..Appellant(s)

Vs

K. Ethiraj
No.2, New Boag Road, Lalithapuram, T. Nagar,
Chennai 600 017.

..Respondent(s)

WA No. 2127 of 2025

To set aside the order in WP No.6480 of 2021 dated 29.05.2025
and render justice.

WA No. 2128 of 2025

To set aside the order in WP No.6478 of 2021 dated 29.05.2025





Industrial Disputes Act. In other words, the writ Court gone into the validity of the dismissal order passed by the Management and held that the respondent is entitled to maintain the claim petition and consequently, dismissed the writ petitions filed by the Management.

5. Learned counsel for the appellant, Mr. Balan Haridas, mainly contends that the scope of Section 33C(2) of the Industrial Disputes Act has been well defined in *catena* of judgment. Pre-existing right/entitlement is to be established to maintain the claim petition to recover the money due from an employer. In the absence of any pre-existing right, petition under Section 33C(2) is not entertainable. In other words, there must be an adjudication of entitlement, prior to the filing of Claim Petition under Section 33(C)(2) of Industrial Disputes Act or there must be an existing right. In the present case, no such adjudication occurred nor the respondent approached the Labour Court for such adjudication. Thus, the order of the writ Court is perverse and in violation of the scope of Section 33C(2) of the Industrial Disputes Act.

6. Per contra, the learned counsel for the respondent/workman would oppose by stating that the Writ Court found that the order of dismissal is *per se* illegal and no prior approval was obtained as mandated under the Industrial Disputes Act. That apart, the respondent is a protected workman. Therefore, prior approval is mandatory and thus, the writ Court is right in dismissing the writ petitions filed by the appellant Management.

7. This Court has considered the rival submissions made between the parties to the lis on hand.



8. Let us consider the spirit of Section 33C(1)(2) of the Industrial Disputes Act, 1947, which reads as under.

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33C. Recovery of money due from an employer.-

(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or Chapter V-B, the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer :

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) 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:

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.

9. Section 33C is about recovery of money due from an employer. Sub Section (1) stipulates that where any money is due to a workman from an employer under any settlement or an award or under the provisions of Chapter V-A or Chapter V-B, then a petition under section 33C(1) is maintainable. As far as sub-section (2) to Section 33(C) is concerned, where any workman is entitled to receive from an employer any money or any benefit, which is capable of being commuted in terms of money. Therefore, the entitlement to recover the dues is the pre-existing right, to be established for the purpose of maintaining a claim petition under Section 33C(2) of the Industrial Disputes Act. Entitlement under Section 33C(2) cannot be presumed nor to be determined by the workman, but to be ascertained by the competent Labour Court or the competent authority under law. In the absence of pre-existing right through an adjudication or based on right conferred, no claim petition is maintainable. Rights cannot be adjudicated and determined in a claim petition, since the scope of petition under Section 33C(2) is to recover the money due from an employer.

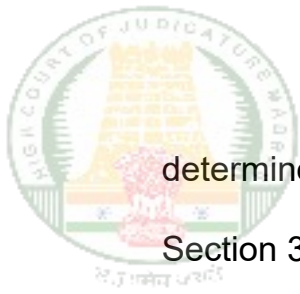


10. Sub Section(1) deals with the entitlement under settlement or an award under the provisions of enactment. Sub section (2) indicates that entitlement is to be established in the manner known to law. Entitlement under sub-section (2) neither be presumed by the workman nor be considered by the Courts in the absence of any adjudication regarding entitlement of an employee to recover the money due from an employer.

11. In the common parlance, recovery of money due from any person would arise only if the entitlement to recover is established in the manner known to law. That apart, recovery is consequential relief, which is to be granted after ascertaining the entitlement to recover. That being the established legal principles, the scope of section 33C(2) cannot be interpreted in any other way in the absence of adjudication, confirming the rights of workmen to recover the money due from an employer.

12. In the present case, admittedly, no such adjudication took place. The respondent workmen sent a representation to the Management and filed a writ petition before the writ court to direct the Management to dispose of the representation, which was not done by the Management. The said writ order is of any avail to the workman to claim entitlement of any due.

13. In the present case, the Labour Court and the Writ Court have not considered the scope of maintainability/ entertainability of the claim petition under Section 33C(2) of the Industrial Disputes Act. Both the Courts have considered the disputed facts between the parties and the correctness of the order issued by the Management to the workman. Adjudication of merits to



determine the right of a workman is impermissible and beyond the scope of Section 33C(2) of the Industrial Disputes Act.

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14. That being the factum, this Court is inclined to interfere with the orders impugned. Accordingly, the Writ order dated 29.05.2025 passed in W.P.Nos.6478 & 6480 of 2021 is set aside and the respondent workman is at liberty to file appropriate petition before the competent Court of law to establish his pre-existing right regarding his claim about recovery of backwages and thereafter, if he succeeds, he may maintain the claim petition under Section 33C(2) of the Industrial Disputes Act. Accordingly, the Writ Appeals are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

(S.M.S.,J.) (K.S.,J.)
08-04-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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WA Nos. 2127 & 2128 of 2



**S.M.SUBRAMANIAM J.
AND
K.SURENDER J.**

vsi

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