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

CWP-3379-2016Date of Decision : **06.04.2026****LABH SINGH**

.....Petitioner

VERSUS

**THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL
BATHINDA AND ORS.**

.....Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. P.K.Garg, Advocate,
for the petitioner.

Mr. Ankur Goyat, Advocate and
Mr. S.C.Jindal, Advocate,
for respondents no.3.

KULDEEP TIWARI, J. (Oral)

1. Through the instant petition, as cast under Article 226/227 of the Constitution of India, an order dated 26.11.2015 (Annexure P-8), has been put to challenge, as the application preferred by the petitioner under Section 33-C(2) of the Industrial Disputes Act, 1947, was declined by the learned Tribunal concerned.

2. Learned counsel for the petitioner submits that despite the petitioner having been reinstated into service by the competent authority vide order dated 31.10.2007 (Annexure P-3), he was not allowed to join his duties by the Kahangarh Society (respondent no.3). However, finally he was allowed to join his duties only on 17.05.2008. Therefore, the petitioner filed an application before the learned Tribunal concerned,



claiming himself to be entitled to receive a sum of Rs.1.50 lakhs, on account of salary w.e.f. 09.07.2007 to 16.05.2008, and also entitled for one increment w.e.f. 01.01.2005, till the date of his illegal dismissal, which comes to Rs.1.25 lakhs. .

3. He further submits that the learned Tribunal concerned, found that no pre-existing right exists in favour of the petitioner, for him to invoke the provisions of Section 33-C(2) of the Industrial Disputes Act, 1947, and held the claim of the petitioner not maintainable.

4. Learned counsel for the petitioner draws attention of this Court towards the order dated 31.10.2007 (Annexure P-3), wherethrough, the order of the petitioner's dismissal from service, was set aside, and he was reinstated into service in the Kahangarh Society-respondent no.3, as Salesman.

5. He further submits that the petitioner was not allowed to join his duties, rather Kahangarh Society-respondent no.3 relieved him only on 07.10.2009, to join his parent society. Therefore, for this interim period respondent no.3-Society, is required to make the payment of salary of the petitioner. In case the petitioner had been allowed to join his duty immediately after passing of the order dated 31.10.2007, he would also have been entitled for an increment.

6. On the other hand, learned counsel for respondent no.3-Society, submits that there is no pre-existing right for the learned Tribunal concerned, to decide the application under Section 33-C(2) of the Industrial Disputes Act, 1947.



7. He further submits that the petitioner was, in fact, the employee of MPCAS, Kudal Kalan Society, and he was sent on deputation with Kahangarh Society-respondent no.3, therefore, after setting aside of the dismissal order, the petitioner was required to join his parent society. He also submits that such a liberty was also given by the Industrial Tribunal, that in case Kahangarh Society (respondent no.3), does not wish to keep the petitioner with them, then he be sent back from his earlier society, i.e. the Khudal Kalan Society.

8. He also submits that a specific resolution was passed way back on 28.02.2008 (Annexure P-4), directing the petitioner to join his services with the parent society.

9. This Court has examined the submissions, as made by learned counsel for the parties concerned, and has perused the entire case file.

10. It is imperative to have a glimpse upon the order dated 31.10.2007 (Annexure P-3), wherethrough, the petitioner, was reinstated, and order/resolution dated 17.10.2006 and 09.07.2007, were set aside.

The relevant is extracted hereinafter:-

“As such, after going through the whole case and hearing the argument from appellant and respondent, present appeal of the appellant is accepted and the resolution dated 17.10.2006 passed by the Managing Committee of the Kahangarh CASS vide which, appellant has been suspended and resolution dated 09.07.2007, vide which, appellant has been dismissed are set aside and Sh. Labh Singh, Salesman is reinstated in service of the Kahangarh CASS as Salesman. As has been requested by Sh. Labh Singh, Appellant during argument that if Managing Committee, Kahangarh CASS does not wish to keep him then he be sent back from his earlier society, the Khudal Kalan CASS from where he has come to The Kahangarh CASS. The order was



reserved on 30.10.2007 and has been written today on 31.10.2007. Its information be given to the concerned parties.”

11. A perusal of the above clearly reflects that after setting aside of the order of dismissal, the petitioner was directed to be reinstated into service, by the Kahangarh Society (respondent no.3), however, liberty was granted that in case the latter concerned, does not wish to keep him, then he be sent back to his earlier society, i.e. Khudal Kalan CASS. Thereupon, the Kahangarh Society (respondent no.3), passed a resolution dated 28.02.2008 (Annexure P-4), informing the petitioner that he was being sent back to Khudal Kalan Society. Therefore, there was no occasion for the petitioner to seek salary from Kahangarh Society (respondent no.3), w.e.f. 09.07.2007 to 16.05.2008.

12. This Court has put a specific query to learned counsel for the petitioner, as to what are the pre-existing rights, which has not been adjudicated upon by the authority concerned, with regard to his asked for entitlement, to which, he is unable to satisfy this Court. Therefore, this Court finds no merit in the instant case, requiring interference into the well reasoned order, as impugned herein.

13. So far as, the resolution dated 07.10.2009 (Annexure P-5), passed by the Kahangarh Society (respondent no.3), is concerned, that would not create any right in favour of the petitioner, specifically, in view of the earlier resolution dated 28.02.2008, where through, the petitioner, was ordered to be transferred back to the Khudal Kalan Society.

14. Further this Court has examined the issue of pre-existing



right on the touchstone of the judgement rendered by the Hon'ble Supreme Court in ***"M/s Bombay Chemical Industries vs. Deputy Labour Commissioner and another"***, 2022 LiveLaw (SC) 130. The relevant is extracted hereinafter:-

"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 preposition 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,

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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.”

14. In view of the above, the instant petition, is hereby, **dismissed.**

15. A photocopy of this order be placed on the file of the connected case.

April 06, 2026
dharamvir

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No