

(2026) 01 KL CK 1688

In the High Court Of Kerala

Case No : Writ Petition (C) Nos.38729 & 43396 Of 2025

D+H Solutions India Private Limited

APPELLANT

Vs

Jayakrishnan Ramachandran Nair,

RESPONDENT

Date of Decision : 20-01-2026

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2), 36A, 59

Citation : (2026) 01 KL CK 1688

Hon'ble Judges : Gopinath P., J

Bench : Single Bench

Advocate : Benny P. Thomas, Abel Tom Benny, D.Prem Kamath, Tom Thomas (Kakkuzhiyil), Aaron Zacharias Benny, Tessa Rose, Mathew Angelo Davis, Ananditha Rajeev, V.A.Vinod, Suhail M.

Final Decision : Disposed Of

Judgement

Gopinath P., J

These writ petitions raise a common question as to whether a petition can be filed under Section 33 C (2) of the Industrial Disputes Act, 1947 [Section 33 C (2) of the 1947 Act corresponds to Section 59 of the Industrial Relations Code, 2020] (hereinafter referred to as 'the 1947 Act') without there being an independent adjudication of the claim by the Labour Court / Industrial Tribunal. It is not disputed before me that the orders impugned in these writ petitions are orders on claim petitions filed under Section 33 C (2) of the 1947 Act without there being any prior adjudication before the Labour Court or the Industrial Tribunal. The question raised is no longer res integra in the light of the law laid down by the Supreme Court in Municipal Corporation of Delhi v. Danesh Razak and others, (1995) 1 SCC 235 and Bombay Chemical Industries v. Deputy Labour Commissioner and others, (2022) 5 SCC 629. In Municipal Corporation of Delhi (supra) the Supreme Court held as follows;

"8. Reference may be made first to the Constitution Bench decision in Central

Bank of India Ltd. v. P.S. Rajagopalan on which Shri Rao placed heavy reliance. That was a case in which the question of maintainability of proceedings under Section 33-C(2) of the Act was considered in a claim made by the workmen on the basis of the Sastry Award. The employer disputed the claim of the workmen on several grounds including the applicability of Section 33-C(2) of the Act. It was urged that since the applications involved a question of interpretation of the Sastry Award, they were outside the purview of Section 33-C(2) because interpretation of awards or settlements has been expressly provided for by Section 36-A. This objection was rejected. This Court pointed out the difference in the scope of Section 36-A and Section 33-C(2) indicating that the distinction lies in the fact that Section 36-A is not concerned with the implementation or execution of the award whereas that is the sole purpose of Section 33-C(2); and whereas Section 33-C(2) deals with cases of implementation of individual rights of workmen falling under its provisions, Section 36-A deals merely with a question of interpretation of the award where a dispute arises in that behalf between the workmen and the employer and the appropriate Government is satisfied that the dispute deserves to be resolved by reference under Section 36-A. In this context, this Court also indicated that the power of the Labour Court in a proceeding under Section 33-C(2) being akin to that of the Executing Court, the Labour Court is competent to interpret the award or settlement on which a workman bases his claim under Section 33-C(2), like the power of the Executing Court to interpret the decree for the purpose of execution. Relevant extract from that decision is as under: (SCR pp. 154-155)

"Besides, there can be no doubt that when the Labour Court is given the power to allow an individual workman to execute or implement his existing individual rights, it is virtually exercising execution powers in some cases, and it is well settled that it is open to the Executing Court to interpret the decree for the purpose of execution. It is, of course, true that the Executing Court cannot go behind the decree, nor can it add to or subtract from the provision of the decree. These limitations apply also to the Labour Court; but like the Executing Court, the Labour Court would also be competent to interpret the award or settlement on which a workman bases his claim under Section 33-C(2). Therefore, we feel no difficulty in holding that for the purpose of making the necessary determination under Section 33-C(2), it would, in appropriate cases, be open to the Labour Court to interpret the award or settlement on which the workman's right rests."

This decision itself indicates that the power of the Labour Court under Section 33-C(2) extends to interpretation of the award or settlement on which the workman's right rests, like the Executing Court's power to interpret the decree for the purpose of execution, where the basis of the claim is referable to the award or settlement, but it does not extend to determination of the dispute of entitlement or the basis of the claim if there be no prior adjudication or recognition of the same by the employer. This decision negatives instead of supporting the submission of learned counsel for the respondents.

9. Another decision on the point is *Bombay Gas Co. Ltd. v. Gopal Bhiva* wherein also Gajendragadkar, J., (as he then was) speaking for the Bench, referring to the above Constitution Bench decision, stated that the proceedings contemplated by Section 33-C(2) are analogous to execution proceedings and the Labour Court, like the Executing Court in the execution proceedings governed by the Code of Civil Procedure, would be competent to interpret the award on which the claim is based. It is obvious that the power of the Executing Court is only to implement the adjudication already made by a decree and not to adjudicate a disputed claim which requires adjudication for its enforcement in the form of decree. The Executing Court, after the decree has been passed, is however competent to interpret the decree for the purpose of its implementation. This position was settled by the above Constitution Bench decision and has been the consistent view of this Court ever since then.

10. Next case on this point is *Chief Mining Engineer, East India Coal Co. Ltd. v. Rameswar* wherein the above decisions were relied on. It was held that the right to the benefit which is sought to be computed under Section 33-C(2) must be "an existing one, that is to say, already adjudicated upon or provided for". The propositions on the question as to the scope of Section 33-C(2) deducible from the earlier decisions of this Court were summarised and they include the following, namely: (SCR pp. 142-144)

"(1) The legislative history indicates that the legislature, after providing broadly for the investigation and settlement of disputes on the basis of collective bargaining, recognised the need of individual workmen of a speedy remedy to enforce their existing individual rights and therefore inserted Section 33-A in 1950 and Section 33-C in 1956. These two sections illustrate cases in which individual workmen can enforce their rights without having to take recourse to Section 10(1) and without having to depend on their union to espouse their case.

(3) Section 33-C which is in terms similar to those in Section 20 of the Industrial Disputes (Appellate Tribunal) Act, 1950 is a provision in the nature of an executing provision.

(5) Section 33-C(2) takes within its purview cases of workmen who claim that the benefit to which they are entitled should be computed in terms of money even though the right to the benefit on which their claim is based is disputed by their employers. It is open to the Labour Court to interpret the award or settlement on which the workmen's right rests.

(7) Though the court did not indicate which cases other than those under sub-section (1) would fall under sub-section (2), it pointed out illustrative cases which would not fall under sub-section (2), viz., cases which would appropriately

be adjudicated under Section 10(1) or claims which have already been the subject-matter of settlement to which Sections 18 and 19 would apply.

(8) Since proceedings under Section 33-C(2) are analogous to execution proceedings and the Labour Court called upon to compute in terms of money the benefit claimed by a workman is in such cases in the position of an Executing Court, the Labour Court like the Executing Court in execution proceedings governed by the Code of Civil Procedure, is competent under Section 33-C(2) to interpret the award or settlement where the benefit is claimed under such award or settlement and it would be open to it to consider the plea of nullity where the award is made without jurisdiction."

After stating the propositions, the decision proceeds to state as under: (SCR p. 144)

"It is clear that the right 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 an industrial workman and his employer."

11. In *Central Inland Water Transport Corpn. Ltd. v. Workmen* it was held with reference to the earlier decisions that a proceeding under Section 33-C(2) being in the nature of an execution proceeding, it would appear that an investigation of the alleged right of re-employment is outside its scope and the Labour Court exercising power under Section 33-C(2) of the Act cannot arrogate to itself the functions of adjudication of the dispute relating to the claim of re-employment. Distinction between proceedings in a suit and execution proceedings thereafter was pointed out. It was indicated that the plaintiff's right to relief against the defendant involves an investigation which can be done only in a suit and once the defendant's liability had been adjudicated in the suit, the working out of such liability with a view to give relief is the function of an execution proceeding. This distinction is clearly brought out in that decision as under: (SCR p. 159 : SCC pp. 701-02)

"In a suit, a claim for relief made by the plaintiff against the defendant involves an investigation directed to the determination of (i) the plaintiff's right to relief; (ii) the corresponding liability of the defendant, including, whether the defendant is, at all, liable or not; and (iii) the extent of the defendant's liability, if any. The working out of such liability with a view to give relief is generally regarded as the function of an execution proceeding. Determination No. (iii) referred to above, that is to say, the extent of the defendant's liability may sometimes be left over for determination in execution proceedings. But that is not the case with the determinations under heads (i) and (ii). They are normally regarded as the functions of a suit and not an execution proceeding. Since a proceeding under Section 33-C(2) is in the nature of an execution proceeding it should follow that an investigation of the nature of determinations (i) and (ii) above is, normally, outside its scope. It is true that in a proceeding under Section 33-C(2), as in an

execution proceeding, it may be necessary to determine the identity of the person by whom or against whom the claim is made if there is a challenge on that score. But that is merely 'Incidental'. To call determinations (i) and (ii) 'Incidental' to an execution proceeding would be a perversion, because execution proceedings in which the extent of liability is worked out are just consequential upon the determinations (i) and (ii) and represent the last stage in a process leading to final relief. Therefore, when a claim is made before the Labour Court under Section 33-C(2) that court must clearly understand the limitations under which it is to function. It cannot arrogate to itself the functions—say of an Industrial Tribunal which alone is entitled to make adjudications in the nature of determinations (i) and (ii) referred to above, or proceed to compute the benefit by dubbing the former as 'Incidental' to its main business of computation. In such cases, determinations (i) and (ii) are not 'Incidental' to the computation.

The computation itself is consequential upon and subsidiary to determinations (i) and (ii) as the last stage in the process which commenced with a reference to the Industrial Tribunal. It was, therefore, held in *State Bank of Bikaner and Jaipur v. R.L. Khandelwal* that a workman cannot put forward a claim in an application under Section 33-C(2) in respect of a matter which is not based on an existing right and which can be appropriately the subject-matter of an industrial dispute which requires a reference under Section 10 of the Act."

12. The High Court has referred to some of these decisions but missed the true import thereof. The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33-C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33-C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution."

In *Bombay Chemical Industries (supra)* the Supreme Court referred to the judgment in *Municipal Corporation of Delhi (supra)* and held as follows;

"7. At the outset it is required to be noted that Respondent 2 herein filed an application before the Labour Court under Section 33-C(2) of the Industrial Disputes Act, demanding difference of wages from 1-4- 2006 to 31-3-2012. It was thus the case on behalf of Respondent 2 that he was working with the appellant as a salesman. However, the appellant had taken a categorical stand that Respondent 2 was never engaged by the appellant. It was specifically the case on behalf of the appellant that Respondent 2 had never worked in the

establishment in the post of salesman. Therefore, once there was a serious dispute that Respondent 2 had worked as an employee of the appellant and there was a very serious dispute raised by the appellant that Respondent 2 was not in employment as a salesman as claimed by Respondent 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 2.

8. 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 Ganesh Razak, 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.

9. In Kankuben, 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 the Labour Court under Section 33-C(2) of the ID Act. It is further observed that the benefit sought to be enforced under Section 33-C(2) of the ID Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a 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 the jurisdiction of the Labour Court exercising powers under Section 33-C(2) of the ID Act while the latter does not."

The learned counsel appearing for the 1st respondent in both the writ petitions does not dispute the proposition of law as laid down by the Supreme Court in the decisions referred to above. Therefore, these writ petitions are allowed, and Ext.P4 in W.P (C) No.38729/2025 and Ext.P5 in W.P (C) No.43396/2025 will stand set aside, reserving liberty of the 1st respondent to have any claim adjudicated in accordance with the law. Since it has come to the notice of this court that in several cases, claims have been considered under Section 33 C(2) of the 1947 Act even in the absence of any prior adjudication, the Registry is directed to send a copy of this judgment to the Labour Courts and Industrial Tribunals functioning within the jurisdiction of this court. All other contentions on merits raised by either side are left open.

These writ petitions are ordered accordingly.