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**(2010) 02 UK CK 0004**  
**In the Uttarakhand High Court**

Garhwal Jal Sansthan

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

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**Date of Decision :** 17-02-2010

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 10, 33C

**Citation :** (2010) 1 UD 311

**Hon'ble Judges :** Tarun Agarwala, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Tarun Agarwala, J.—Heard Shri Rakesh Thapliyal, the learned Counsel for the petitioner and Shri B.M. Pingal, the learned Counsel for the workman.

2. The petitioner is aggrieved by the order of the Labour Court allowing the application of the workman u/s 33C(2) of the Industrial Disputes Act, 1947.

3. The facts leading to the filing of the writ petition is, that the workman was initially appointed on a consolidated pay of Rs. 180/- per month as a Junior Fitter on work charge basis in the year 1978. He worked continuously for three years and, consequently, the employer appointed the workman in a regular capacity on the post of Beldar in the pay scale of Rs. 165-215. It is alleged that the employer continued to take the work of a Junior Fitter which post was in a higher pay scale and, consequently, the workman approached the writ court of the Allahabad High Court praying that he should be regularized on the post of Junior Fitter. The said writ petition was disposed of with a direction to the authority concerned to decide the representation of the workman. It is alleged that the representation was rejected by the employer on 21/09/1994 and, the workman being aggrieved, filed an application u/s 33C(2) for the computation of the benefit which had been denied to him.

4. The employer took a preliminary objection and contended that the application u/s 33C(2) was not maintainable since there was no previous adjudication of the

entitlement or of the right of the workman on the post of Junior Fitter and, consequently, in the absence of any entitlement being adjudicated previously in an appropriate forum, the workman was not entitled to move an application u/s 33C(2). A submission was further made that proceedings u/s 33C(2) are in the nature of execution proceedings and, therefore, such question of entitlement cannot be adjudicated by the Labour Court and that the matter has to be relegated by making a reference u/s 10 of the Industrial Disputes Act or u/s 4K of the Industrial Disputes Act.

5. The Labour Court, after considering the material evidence on record, found that the workman was in fact working as a Junior Fitter and was not working as a Beldar on the basis of the statement given by the Junior Engineer and the diary which he had maintained. The Labour Court, consequently calculated the amount which the workman was entitled to receive while working as a Junior Fitter and accordingly computed the amount of Rs. 54,000/- payable to him as difference of wages. The employer, being aggrieved by the said order, has filed the present writ petition.

6. The learned Counsel for the petitioner has made the same submission before this Court, namely, that the application of the workman u/s 33C(2) was not maintainable. In support of his submission, the learned Counsel for the petitioner has placed reliance upon a decision of the Supreme Court in the case of Municipal Corporation of Delhi Vs. Ganesh Razak and Another, . In the said judgment, the Supreme Court held that the claim of the workers for equal pay for equal work was a question which was required to be adjudicated and, consequently, such entitlement or basis of the claim of the workman could not be adjudicated in a proceedings u/s 33C(2). The Supreme Court in the aforesaid judgment held as under:

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 workman 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 proceedings u/s 33C(2) of the Act. The Labour Court has not 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 u/s 33-C (2) of the Act. It is only when the entitlement has been earlier adjudicated or recognized 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 u/s 33-C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution.

7. There is no quarrel with regard to the proposition of law laid down by the Supreme Court in the aforesaid judgment. But here, in the present case, the question is slightly different and, the question is, whether the workman has the

right to receive the benefit which was already existing previously and which has been denied to the workman for ulterior reasons. The further question is, whether such benefit which the workman otherwise would have received and denied wrongly by some ulterior motive, should the workman be relegated to another forum by raising an industrial dispute u/s 10 or u/s 4-K or move an application straightway to the Labour Court u/s 33-C (2).

8. The Constitution Bench of the Supreme Court in *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, has held that if the right to receive the benefit is disputed in that event it has to be determined by the Labour Court and that before computing the benefit in terms of money, the Labour Court has to deal as to whether the workman had a right to receive that benefit. The Constitution Bench further held that if the right was not disputed, nothing more was required to be done and the Labour Court could proceed straightway u/s 33-C (2) to compute the value of the benefit in terms of money.

9. Similarly, in *Chief Mining Engineer East India Coal Co. Ltd. Vs. Rameswar and Others*, , the Supreme Court held that the right to the benefit must be an existing one, i.e., already adjudicated upon and that the scope of Section 33-C (2) is wider than the scope of 33-C (1) in as much as the benefit provided by a scheme or a statute could be adjudicated u/s 33-C (2). In *Tara and Others Vs. Director, Social Welfare and Others*, , the Supreme Court held that where the status and nature of employment was not in dispute, the same could be adjudicated u/s 33-C (2). Similar view was held by the Supreme Court in *State of Uttar Pradesh and Another Vs. Brijpal Singh*, .

10. In the light of the aforesaid, the workman has claimed the benefit of the pay scale which was being given to a Junior Fitter, which work he was performing. The fact that the workman was performing the work of Junior Fitter was found to be correct by the Labour Court which fact has not been seriously disputed before this Court in a writ jurisdiction. The findings given by the Labour Court has not been questioned before this Court. Secondly, at this stage the issue whether on a technicality the application of the workman should be thrown out and the workman should be relegated to raise a reference u/s 10 before the same Labour Court and undergo the rigorous process of raising a reference before the State Government, in my mind, is not justifiable.

11. In the light of the aforesaid, the claim of the workman for payment of the wages was maintainable for which he was validly entitled to and which is flowing from the benefit of the wages that was payable by the employer on the post of Junior Fitter. In my view, the application of the workman was maintainable u/s 33-C (2) and the Labour Court has validly computed the amount when it found that the nature of the employment which the workman was performing was that of a Junior Fitter. Consequently, the calculation of the amount made by the Labour Court, being based on findings of fact, does not suffer from any error of law. The writ petition fails and is dismissed. In the circumstances of the case, there shall be no order as to cost.

12. At the time when the writ petition was entertained, an interim order was passed staying the order of the Labour Court. Since the writ petition has been dismissed, the petitioner is directed to pay the amount within two months from the date of production of a certified copy of this order