
(2016) 03 GUJ CK 0116

In the Gujarat High Court

Case No : Special Civil Application No. 21818 of 2006

General Manager Deptt. of Telecom

APPELLANT

Vs

Sitabkhan Nivajkhan Pathan

RESPONDENT

Date of Decision : 14-03-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)

Citation : (2016) 3 LLN 624

Hon'ble Judges : K.M. Thaker, J.

Bench : Single Bench

Advocate : Mr. P.C. Master, Advocate, for the Petitioners No. 1; Mr. Varun K. Patel, Advocate, for the Respondents No. 1; Rule served, for the Respondents No. 2

Final Decision : Disposed Off

Judgement

Mr. K.M. Thaker, J. (Oral)—In this petition the petitioner has brought under challenge the order dated 7.12.2005 passed by learned Central Government Industrial Tribunalcum Labour Court, Ahmedabad in Recovery (CGITA) No. 73 of 2004 whereby learned Labour Court directed present petitioner to pay to the respondent salary for the period from January 1999 to August 2000 amounting to Rs. 2,37,826/and due T.A. and D.A. within 30 days from the date of the order with further direction that if the amount is not paid within 30 days then the amount shall carry interest @ 9% per annum until the date of actual payment.

2. This petition is pending since 2006 and is already adjourned 36 times. Today when the petition is called out and taken up for hearing learned advocate for the petitioner is not present. Mr. Patel, learned advocate for the respondent workman is present.

2.1. Having regard to the fact that the petition is pending since about 9 years the Court considered it appropriate to decide the matter in absence of the learned

advocate for the petitioner. The Court is informed that sick note or leave note is not filed by the learned advocate for the petitioner.

3. The respondent workman filed Recovery Application before learned Tribunal on the allegation that though he had been regularly reporting for duty during the period in question i.e. from January 1999 to August 2000 however the opponent i.e. present respondent did not pay salary for the said period.

3.1. So as to understand the facts and details on strength of which respondent herein based his claim it is appropriate to take into account the details mentioned in the recovery application.

4. The applicant claimed that he joined service with the opponent (i.e. present petitioner) in 1976 and he was required to work at different places in State of Gujarat. At the relevant time he was working as Junior Telecom Officer ("J.T.O." for short). In paragraph No. 3 of the application the respondent herein averred and stated that :

"(3) Since Jan. 1999, applicant regularly go to his normal duties, he attends the office as well as work place but no work is provided to applicant and also opponent is also not giving him his monthly salary. Thus, from Jan. 1999 to till today, he is not paid any amount towards his monthly salary."

4.1. The respondent herein also claimed that opponent (i.e. present petitioner) had not issued any show cause notice for any alleged misconduct and/or any order by way of penalty was not passed against him and despite such position he was not paid salary for the said period. In this context the applicant (i.e. present respondent) averred in the application that:

"(4) It is very very important to note that till today, opponent has not issued him any notice, no dept. action has been initiate, no order for the said attitude is given him, no reason has been given, either in writing or in oral for the said unpaid salary for one year and eight months. The said action of the opponent is totally illegal, improper and against the principles of natural justice. As with the result, applicant has to face the situation of starvation and the question of maintenance of himself and his family.

(5) Thus as per the law and above mentioned facts and circumstances, the monthly salary from Jan.99 to till today (which is unpaid to applicant) is due to him from opponent. For same applicant has given to so many written application, notices, oral requests to opponent, even he has filed written complaints to his Union, but union has not taken any trouble to raise the dispute as well as opponent has also not taken any trouble to reply the me. Hence, there is no other alternative but to file this recovery application"

4.2. On basis of the said averments and allegations the respondent herein prayed, inter alia, that:

"7(a) Declare that the amount of unpaid salary from Jan.99 to till Aug. 2000 Rs.

4,78,393/is due to the applicant from opponent, and also order that the opponent shall pay the said amount to applicant immediately with 18% interest."

4.3. Along with the application the respondent herein also placed statement reflecting the calculation with regard to the total claim amount. The said statement is placed on record at pages 42 and 43 of this petition.

4.4. From the record it appears that the said application was opposed by present petitioner by filing written statement. In the written statement the petitioner claimed that:

"6. In reply to Para2 of the application, it is submitted that the applicant had resumed his duties as J.T.O. under mutual transfer with Shri K.P. Mahida, J.T.O. CMG with Head Quarter at Junagadh and allotted the same work of Shri K.P. Mahida. The applicant was allotted the work of 2nd Line Mtce of Career/VFT Systems in nearby S SAs of Junagadh and maintenance of faulty transmission systems reported by S SAs through the office of the Regional Engineer (Mtce). In the circumstances, it cannot be said that the applicant is the technical person. It is not true that the applicant is a workman U/s 2(3) of the I.D.Act, 1947.

(7) In reply to Para3 of the application, it is submitted that after resumption of his duties, he had not attended his duties regularly and mostly found absent from his duties at his H.Q. at Junagadh without prior intimation/permission/sanction of any kind of leave of his higher authority at Ahmedabad. Considering the facts, actions were taken observing the departmental formalities.

Therefore, it is not true that applicant regularly attended his normal duties. It is not true that no work was provided to him. It is not true that since January, 1999 till date, no salary is paid without any reasons.

(8) In reply to para4 of the application, it is submitted that it is not true as stated by the applicant that no departmental action been initiated. It is not true that no reason been given for unpaid salary for one year and eight months. The applicant has raised false allegations in this para and the same hereby denied by the opponent."

4.5. According to the petitioner - original opponent, the applicant had sought mutual transfer vice Mr. K.P. Mahida. It also appears from the said reply/written statement filed by present petitioner that present respondent's request was granted and present respondent (i.e. original applicant) was allotted work of 2nd Line Mtce of Career/VFT Systems in nearby S SAs of Junagadh and maintenance of faulty transmission systems.

4.6. In its reply the respondent further alleged that after resuming his duty the claimant had not attended duty regularly and he was mostly found absent from his duty at Junagadh Head Quarter. On such statement and allegation the petitioner herein opposed recovery application and claim of the applicant i.e present opponent.

4.7. It is pertinent that the petitioner herein also claimed in its written statement that the claimant's (i.e. present respondent) allegation that any departmental inquiry was not conducted is incorrect.

4.8. However, the petitioner herein (i.e. original opponent) did not place any material on record before the learned Labour Court to support its denial and/or to establish that any departmental enquiry was conducted or was pending against present respondent.

4.9. This aspect is expressly recorded even by learned Tribunal in the order.

4.10. After stage of pleading was concluded the learned Labour Court recorded deposition of the claimant i.e. present respondent. During his deposition the respondent herein reiterated his allegations and the details mentioned in his statement of claim. He also claimed that he was not paid salary from January 1999 to August 2000. Though he was regularly and diligently reporting for duty. The claimant i.e. respondent herein was subjected to cross examine by the petitioner i.e. original opponent. The petitioner herein i.e. original opponent examined witness whose evidence was recorded at Exh.29.

4.11. Learned Labour Court considered the pleadings, documents on record, oral evidence and submissions by learned advocate for the contesting parties and after considering entire material, learned Labour Court passed order dated 7.12.2005 which is impugned in present petition.

5. On examination of the memo of the petition and the reply/written statement filed before the learned Labour Court it appears that the petitioner herein had opposed the recovery application on the ground that the claimant cannot be said to be workman and that the application is not maintainable because the claimant has not impleaded Bharat Sanchar Nigam Limited ("BSNL" for short) as party to the recovery application. Besides the said objection the petitioner herein opposed the recovery application on the ground that after resuming his duty the respondent was not regularly attending his duty. The petitioner claimed before learned labour Court that:

".... after resumption of his duties, he had not attended his duties regularly and mostly found absent from his duties at his H.Q. at Junagadh without prior intimation/permission/sanction of any kind of leave of his higher authority at Ahmedabad...."

5.1. From the said statement in its reply filed before the learned Labour Court it becomes clear that (a) even according to the petitioner the respondent - claimant had reported and resumed his duty at Junagadh (b) his Head Quarter was fixed at Junagadh (c) the respondent was allegedly found absent from duty without prior permission.

5.2. Thus, there is no dispute about the fact that the respondent's duty was assigned at Junagadh.

6. At this stage Mr. P.C. Master, learned advocate for the petitioner has appeared and the Court has heard his submissions.

6.1. Learned advocate for the petitioner submitted that the impugned order is without jurisdiction inasmuch as the learned Labour Court failed to appreciate that while deciding the recovery application filed under section 33C of the Act, the Court acts merely as executing Court and that, therefore, it cannot decide any dispute and/or any disputed claim. He submitted that while exercising jurisdiction under section 33C of the Act, the learned Labour Court can entertain only existing right and adjudicated claim. He also submitted that the learned Labour Court failed to appreciate that the opponent, i.e. present petitioner had passed order in light of which the competent authority directed that the concerned workman, i.e. present respondent would not be entitled for wages for the period in question and that, therefore, in light of such order of the competent authority, the learned Labour Court could not have entertained and decided the recovery application and could not have directed the petitioner to pay wages for the said period. So as to support the said submissions, learned advocate for the petitioner relied on the decision in the case of Chief Superintending, Government Livestocks Farm, Hissar v. Ramesh Kumar, (1998) 2 (Suppl) LLJ 187. He also relied on the decision in the case of Divisional Personnel Officer, Southern Railway v. Kamalam & Ors., (1995) 3 (Suppl) LLJ 2. Learned advocate for the petitioner also relied on the decision in the case of Municipal Corporation of Delhi v. Ganesh Razak, (1995) 1 SCC 235.

7. Before proceedings further it is relevant to deal with the two objections raised by the petitioner against maintainability of the recovery application.

7.1. One objection is raised on the ground that the claimant had not impleaded BSNL as party to the recovery application.

7.2. From the record and submissions it has emerged that when the recovery application was filed, B.S.N.L. had not started operation and the claimant continued to be employee of the Department of Telecoms and the said fact comes out even from the reply filed by the B.S.N.L.

7.3. It is pertinent that in reply dated 12.8.2002 filed before the learned Labour Court it is averred that:

"I say and submit that prior to the formation of the B.S.N.L. the Telecommunication services were provided by the Govt. Of India through its" Dept. of Telecom. However, now, it is being provided by the B.S.N.L. and also by some other operators and the companies to whom, the licences are issued.

7.4. Having regard to the fact that B.S.N.L. had filed reply before learned Labour Court and contested the recovery application by filing reply and by examining witness, Mr. Master, learned advocate for the petitioner submitted that the petitioner does not press the objection against maintainability of the recovery application on the ground that B.S.N.L. was not impleaded as party.

7.5. Therefore, further deliberation with regard to the said objection is not made in present order.

8. The petitioner herein opposed the recovery application on further ground viz. the respondent is not workman.

8.1. The said contention is dealt with and rightly rejected by the learned Labour Court.

8.2. The claimant had established before learned Labour Court, by leading evidence, that he was not working in any supervisory category and his nature of duty and function was purely technical.

8.3. The petitioner i.e. original opponent failed to place any evidence on record before the learned Labour Court that the nature of the duty performed by the claimant was of supervisory or administrative or managerial nature and/or he was working in capacity of supervisor.

8.4. In absence of any evidence to establish that the claimant was performing supervisory function, learned Labour Court rejected the said contention by holding that the petitioner is workman within the meaning of the term defined under Section 2(s) of the Industrial Disputes Act, 1947 and proceeded to decide the recovery application on merits.

8.5. The said conclusion and decision by learned Labour Court does not call for any interference and cannot be faulted, more particularly in absence of any evidence which would establish that the claimant was performing duty of supervisory nature or that he was appointed and worked in category of supervisor.

9. Before this Court learned advocate for the petitioner raised objection that having regard to the nature of claim, the recovery application should not have been entertained and should have been rejected on the ground that for such claim recovery application under Section 33(c)(2) would not be maintainable.

9.1. Learned advocate for the petitioner submitted that learned labour Court had no jurisdiction to decide the right of the parties and corresponding liability and that the learned Labour Court is acting as Executing Court and that therefore it can undertake exercise of deciding only existing right and not disputed facts.

9.2. In support of the said contention learned advocate for the petitioner submitted that the petitioner had passed certain orders against the respondent and in view of such orders the respondent was not entitled for salary. He further submitted that the legality and propriety of said orders (passed by the employer) could not have been considered and decided by the learned Labour Court in proceedings under Section 33(c) (2). So as to support and justify the said contention learned advocate for the petitioner relied on the decisions in case of *Municipal Corporation of Delhi v. Ganesh Razak*, (1995) 1 SCC 235, Chief Superintendent, Government Livestock Farm v. Ramesh Kumar, 1998 (3) LLJ

(supp.) 187.

10. In this context it is necessary to note that the claim which the respondent herein (i.e. original claimant) raised before the learned Labour Court was in respect of unpaid salary.

11. It cannot be denied that claim for unpaid salary is accrued right in law.

11.1. The right of an employee to claim and receive salary arises from the contract of employment/appointment order and the terms and conditions of employment and the standing orders and applicable rules and regulations and the employee would be entitled to payment of salary on compliance of such conditions. Accordingly, the right to claim and receive unpaid salary for the period of employment/for the period the person - claimant worked is an accrued right. If even on compliance of the applicable service conditions, salary is not paid to the employee, then the claim for unpaid salary in such circumstances would amount to accrued right and application seeking such payment would be maintainable under provisions of section 33(c)(2).

11.2. In present case, the employee has claimed that he was reporting for duty at the place of service regularly and diligently and he also performed duty, however, the opponent, i.e. present petitioner did not pay salary for the period from January 1999 to August 2000. To claim salary for the said period, the respondent herein filed the recovery application. Under the circumstances, the contention that the recovery application, whereby present respondent claimed unpaid salary, is not maintainable, deserves to be rejected and is hereby rejected.

11.3. In this context, a profitable reference may be made to the observations by Hon^{ble} Apex Court in the case of *The Central Bank of India Ltd. v. P.S. Rajagopalan*, AIR 1964 SC 743, wherein Hon^{ble} Apex Court observed and held, inter alia, that:

"18. 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 155 Labour Court would also be competent to interpret the award or settlement on which a workman bases his claim under section 33C (2). Therefore, we feel no difficulty in holding that for the purpose of making the necessary determination under section 33C (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.

19. We have already noticed that in enacting section 33C the legislature has deliberately omitted some words which occurred in section 20 (94 of the

Industrial Disputes (Appellate Tribunal) Act, 1950. It is remarkable that similar words of limitation have been used in section 33C (1) because section 33 C (1) deals with cases where any money is due under a settlement or an award or under the provisions of Chapter VA. It is thus clear that claims made under section 33C (1), by itself can be only claims referable to the settlement, award, or the relevant provisions of Chapter VA. These words of limitations are not to be found in section 33C (2) and to that extent, the scope of section 33C (9.) is undoubtedly wider than that of section 33C (1). It is true that even in respect of the larger class. of cases which fail under section 33C (2), after the determination is made by the Labour Court the execution goes back again to section 33C (1). That is why section 33C (2) expressly provides that the amount so determined may be recovered as provided for in subsection (1). It is unnecessary in the present appeals either to state exhaustively or even to indicate broadly what other categories of claims can fall under section 33C (2). There is no doubt that the three categories of claims mentioned in section 33C (1) fall under section 33C (2) and in that sense, section 33C (2) can itself be deemed to be a kind of. execution proceeding ; .but it is possible that Claims not based on settlements, awards or made under the provisions of Chapter V-A, may also be competent under section 33C (2) and that may illustrate its wider scope. We would, however, like to indicate 156 some of the claims which would not fall under section 33C (2), because they formed the subject matter of the appeals which have been grouped together for our decision along with the appeals with which we are dealing at present. If an employee is dismissed or demoted and it is his case that the dismissal or demotion is wrongful, it would not be open to him to make a claim for the recovery of his salary or wages under section 33G (2). His demotion or dismissal may give rise to an industrial dispute which may be appropriately tried, but once it is shown that the employer has dismissed or demoted him, a claim that the dismissal or demotion is unlawful and. therefore, the employee continues to be the workman of the employer and is entitled to the benefits due to him under a preexisting contract, cannot be made under section 33 C (2). If a settlement has been, duly reached between the employer and his employees and it fails under section 18 (9) or (3) of the Act and is governed by s. (19) 2 it would not be open to an employee, notwithstanding the said settlement, to claim the benefit as though the said settlement had come to an end. If the settlement exists and continues to be operative no claim can be made under section 33C(2) inconsistent with the said settlement. If the settlement is intended to be terminated, proper steps may have to be taken in that behalf and a dispute that may be arise thereafter may to be dealt with according. to the, other procedure prescribed by the Act. Thus, our conclusion is that the scope of section 33G (2)is wider than section 33G (1) and cannot be wholly assimilated with it, though for obvious reasons, we do not propose to decide or indicate what additional cases would fall under section 33G (2) which may not fall under section 33G (1). In this connection, we may incidentally state that the observations made by this Court in the case of Punjab National Bank Ltd (1), that section 33C is a provision in the nature of execution should not be interpreted to

mean that the scope of section 33G (2) is exactly the same as section 33G (1) (page 238). (1) 1962 (1) L.L.J.234."

12. Now, so far as the impugned order and claim raised by present respondent are concerned, it is noticed that the claimant, i.e. present respondent claimed unpaid salary for the period from January 1999 to August 2000, by filing Recovery Application No. 73 of 2004. The learned Labour Court considered the said claim and after examining the material on record reached to the conclusion that the claimant was justified in claiming Rs.2,37,826/and due TA/DA for the period from January 1999 to August 2000 and not Rs.4,78,393/as quantified by the claimant in his application. The Court, therefore, passed the order directing the present petitioner to pay the said amount.

12.1. Learned advocate for the petitioner submitted that the petitioner had passed certain orders denying wages for the period mentioned in the order. He further submitted that the said orders were not challenged by the claimant before filing of the recovery application. He also submitted that the learned Labour Court, therefore, had no jurisdiction to adjudicate the dispute with regard to the orders passed by the petitioner whereby the salary for which the period mentioned in the order was denied to the claimant for the reasons recorded in the orders.

12.2. Now, so far as the orders passed by the petitioner are concerned, the copies of the said orders are found at Annexure-E and Annexure-F (pages 57 and 59 of the present petition). The relevant part of the order dated 26.12.1999 (Annexure-E, page 57) reads thus:

"No. :CMGAM/X1/9900 dated at AM the 20.05.99.

Sub: "Dies Non" order regarding.

Shri S.N. Pathan JTO CMG Junagadh o/o R.E.M. Ahmedabad remained absent from duty without prior permission/intimation/sanction of any kind of leave from competent authority for the period 10.02.1999 to 06.04.99. An explanation for the same was called for vide this office letter No. CMGAM/X1/9900 dated 03.05.99, but no reply is received from the official till the date. Hence, the period of absence from 10.02.99 to 06.04.99 without proper permission/sanction of any leave is hereby ordered to be treated as "DIES NON" without break in service.

This will be without prejudice to any other action that the competent authority might take against the official resorting to such practise."

12.3. It is noticed from the said order that the authority has recorded that the claimant had remained absent from duty without prior permission during the period from 10.2.1999 to 6.4.1999. It is also mentioned in the said order that vide letter dated 3.5.1999 claimant's explanation was called for, however, the claimant did not submit any reply/explanation. The competent authority, therefore, considered the said period as dies non.

12.4. On the strength of such communication, learned advocate for the petitioner would submit that legality of the said order could not have been examined by the learned Labour Court while maintaining application under section 33(c)(2). The said submission is actually ill-founded. However, so far as the facts of present case are concerned, it is relevant to keep in focus the fact that legality and propriety of the said order denying the wages for the period from 10.2.1999 to 6.4.1999 was not challenged by the claimant and it was not challenged even in the subject recovery application, i.e. Recovery Application No. 73 of 2004.

12.5. Similar is the case with regard to the other order. From the record (Annexure-F, page 59), it has emerged that a similar order was passed by the competent authority on 27.3.2000. The said order dated 27.3.2000 is passed in respect of the period from 12.3.2000 to 21.3.2000. The relevant part of the said order dated 27.3.200 reads thus:

"Sub: "Dian Non" Order Regarding.

Shri S.N. Pathan JTO CMG Junagadh remained absent from duty without prior permission/intimation/sanction of any kind of leave from competent authority for the period 12.01.2000 to 21.03.2000. An explanation for the same was called for vide this office letter No. CMGAM/X1/9900 dated 03.05.99, but no reply is received from the official till the date. Hence, the period of absence from 12.01.2000 to 21.03.2000 without proper permission/sanction of any leave is hereby ordered to be treated as "Dias Non Without Break In Service."

12.6. Thus, by the said order dated 27.3.2000, the competent authority denied the wages for the period from 12.1.2000 to 21.3.2000 by treating the period dies non. As mentioned earlier, the record discloses that the said orders were not challenged by the claimant when he filed the recovery application.

13. The learned Labour Court has dealt with the aspect related to the said order.

13.1. The learned Labour Court has observed that the claimant could not have been denied wages on the allegation that he had not reported for duty or he was absent from duty during the said period, without following procedure and without complying principles of natural justice.

13.2. At first blush, the reasoning by the learned Labour Court appears justified. However, it is necessary to keep in focus that any challenge against the legality of the said orders was not raised before the learned Labour Court and that, therefore, it had no occasion or authority or even any need and justification to adjudicate any issue related to the said two orders while deciding Recovery Application No. 73 of 2014.

13.3. However, so far as the other period, i.e. the period not covered by - under above mentioned two orders is concerned, any fault cannot be found with the order and directions passed by the learned Labour Court.

14. As mentioned above, very reply filed by the petitioner herein in respect of

the recovery application before the learned Labour Court, it has emerged that during the relevant period, the claimant's head quarter was at Juangadh and he has assigned duty at Junagadh.

14.1. The said is not disputed even by the petitioner. Actually, in paragraph No. 7 of its reply/written statement dated 12.8.2000, the petitioner itself has admitted that the claimant's quarter was at Junagadh and he has resumed his duty there. The petitioner alleged that after resuming his duty, he was not regular and he was mostly absent from the duty.

15. As mentioned earlier, for the period during which the respondent - claimant allegedly remained absent, the authority appears to have passed orders dated 26.5.1999 and 27.3.2000.

15.1. In respect of other period, any order is not passed and that, therefore, there is nothing on record to establish that during other period, i.e. for the period other than the span mentioned in the said two orders, the claimant was absent from duty.

15.2. Under the circumstances, salary for said other period (i.e. period excluding the span covered under the said two orders) could not have been denied to the claimant.

15.3. In this view of the matter, the order passed by the learned Labour Court at least with regard to the period which is not covered under the order dated 26.5.1999 and 27.3.2000 passed by the competent authority, cannot be faulted.

16. As mentioned earlier, the claim raised by the respondent - claimant in the recovery application amounts to claim based on accrued right and in the light of the above-quoted observations by Hon'ble Apex Court, the contention raised by the learned advocate for the petitioner that the respondent's claim could not have been determined and entertained by the learned Labour Court in the said recovery application because the learned Labour Court acting merely as an executing court is not unsustainable and said contention is without merits and therefore, the said contention is rejecte.

17. So far as the decisions in the case of Municipal Corporation of Delhi (supra), in the case of Divisional Personnel Officer, Southern Railway (supra) and in the case of Chief Superintending Government Livestocks Form Hissa (supra) relied on by the learned advocate for the petitioner is concerned, it is relevant to mention that in the said decisions it is observed and held that the said remedy is available in cases where there is no dispute about entitlement of workman but it cannot be invoked where entitlement is disputed and the learned Labour Court cannot adjudicate dispute of 'entitlement' or 'basis of claim' of workman.

17.1. Thus, what is not permissible for the learned Labour Court is to decide, while determining an application under section 33C(2) of the Act is 'entitlement' of the workman or 'basis of the claim' of the workman.

17.2. In present case, the basis of the workman's claim for his salary is his employment with the petitioner and/or the letter/contract of appointment and applicable Service Rules. His entitlement for the amount claimed by him salary springs from his employment, i.e. letter/contract of appointment and applicable rules.

17.3. The status of the claimant as 'workman' or as 'employee' of the petitioner has never been in dispute.

17.4. It was never the case of the petitioner before the learned Labour Court that the claimant was not its employee.

17.5. Meaning thereby as a workman/as an employee of the petitioner, he would be 'entitled for salary/wages' in accordance with terms of appointment and/or applicable rules. The wages can be denied to the claimant (i.e. the respondent herein) only if the terms of the letter/contract of appointment and/or any provision under applicable rules (violation of which disentitles workman for the wages) is breached by the employee, i.e. respondent herein.

17.6. In view of the fact that the petitioner never disputed the respondent's status as its employee, his entitlement for wages or the basis of his claim was never in dispute and that, therefore, the decisions relied on by the petitioner do not help the petitioner in assailing the order passed by the learned Labour Court.

18. It is, of course, true that the competent authority had passed two orders directing that for the limited period mentioned in the said orders, the respondent will not be entitled for wages.

18.1. The said orders were passed on the premise that the respondent had violated applicable rules by remaining absent from duty without leave or permission.

18.2. Certainly, therefore, the respondent would not be justified to claim wages, in recovery application under section 33C(2), for the period covered by the order passed by the disciplinary authority and he can claim wages for the said period only if the said orders are set aside by the higher/appellate authority of the petitioner or by the Court.

18.3. The dispute with regard to legality and propriety of the competent authority's orders cannot be gone into by the learned Labour Court while entertaining the application under section 33C(2) and to claim the salary for the period covered under said two orders the respondent would be obliged to get the legality and propriety of such orders tested and decided by the Court in appropriate proceedings and it cannot be decided under section 33C(2) of the Act.

18.4. However, in the application filed by the respondent under section 33C, the claim for salary for the period not covered by the said two orders cannot be objected on the ground that even for claiming unpaid salary for such period (i.e. for the period not covered under the competent authority's order), the

application under section 33C would not be maintainable. To that extent, the contention of the petitioner is misconceived and cannot be sustained. Therefore, the said contention is hereby rejected.

19. When the order impugned in present petition is examined in light of the foregoing discussion, it becomes clear that in respect of the period which is not covered by the span mentioned in the two orders dated 26.5.1999 and 27.3.2000 passed by the competent authority, the learned Labour Court's order and directions cannot be faulted. Therefore, the following order is passed.

19.1. The petition is partly allowed. The direction by the learned Labour Court to pay unpaid salary to the respondent for the period from January 1999 to August 2000 and to pay TA/DA is confirmed with the modification that the direction by the learned Labour Court would not apply to the period from 10.2.1999 to 6.4.1999 and 12.1.2000 to 21.3.2000.

19.2. Excluding the said period which forms part of the total period covered by the learned Labour Court's order, the directions and order passed by the learned Labour Court are not disturbed and are hereby confirmed.

19.3. The salary which becomes payable on account of the learned Labour Court's order, of course with the aforesaid modification, shall be paid to the petitioner as per the directions of the learned Labour Court within four weeks from the receipt of the certified copy of this judgment.

19.4. It is clarified that this Court has not entered into the dispute with regard to the legality and propriety of the two orders dated 26.5.1999 and 27.3.2000 passed by the competent authority and present order shall not be construed as expression of final view and decision by this Court on merits with regard to the legality and propriety of the said order passed by the competent authority.

19.5 With the aforesaid clarifications and directions, the petition is disposed of. Rule is made absolute to the aforesaid extent.

19.6 Petition disposed of with clarifications and directions.