

(2015) 03 RAJ CK 0196
In the Rajasthan High Court
Case No : Civil Writ Petition No. 20335 of 2013

Om Prakash Khunteta

APPELLANT

Vs

Labour Court and Others

RESPONDENT

Date of Decision : 23-03-2015

Acts Referred:

Constitution of India, 1950 — Article 32

Industrial Disputes Act, 1947 — Section 10, 33A, 33-A, 33C, 33-C

Citation : (2015) 03 RAJ CK 0196

Hon'ble Judges : Veerender Singh Siradhana, J

Bench : Single Bench

Advocate : V.K. Tamoliya, for the Appellant

Final Decision : Dismissed

Judgement

Veerender Singh Siradhana, J.—The instant writ petition, projects a challenge to the legality and validity of the order dated 12th September, 2012, passed by the Labour Court-1, Jaipur, declining the claim for computation under Section 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as "Act of 1947", for short), as claimed by the petitioner, and therefore, has approached this Court praying for following relief(s).

"It is, therefore, most respectfully prayed that the writ petition may kindly be allowed and by appropriate writ, order or direction the impugned order dated 12th September, 2012 passed by the Labour Court No. 1, Jaipur may kindly be set aside and the application filed U/s 33-C(2) of the Industrial Dispute Act, may kindly allowed as prayed therein. Any other appropriate order and direction to which this Hon"ble court deems just and proper may kindly be passed in favour of the petitioner."

2. Briefly, the indispensable skeletal material facts necessary for appreciation of the controversy raised in the writ petition needs to be first noticed. The petitioner filed an application under Section 33-C(2), Act of 1947, for computation of his

salary with interest. It is pleaded case of the petitioner-workman that he was appointed on 28th March, 1996, by the respondents for assortment of stones, to check measurements, to do work related to bank and other office transactions. The petitioner claimed that his salary at the time of termination of his employment was 3,000/- (rupees three thousand). The petitioner also staked his claim for having worked over time, including work carried out on Sundays, holidays and during the privileged leave etc.

3. The respondents resisting the claim of the petitioner-workman filed their reply to the application stating that the petitioner-workman was engaged for personal and domestic work and was not employee of the firm. Further, the salary, as agreed upon between the parties, was released from the personal account of the Manager of the firm.

4. The Labour Court taking into consideration the pleaded facts, reply to the application and materials available on record as well as upon hearing the representatives of the parties, declined the application under Section 33-C(2) of the Act of 1947, for the money of which computation was sought for was not due under any settlement or an award or under the provisions of the any contract or enactment.

5. Learned counsel for the petitioner reiterating the pleaded facts and grounds of the writ application strenuously argued that the claim of the petitioner is sustainable in view of Section 33-C(2) of the Act of 1947, as would be reflected from a glance of the text of the Section itself, which provides for computation in terms of money of any benefit which a workman is entitled to receive from the employer. The benefit need not be essentially be under a settlement or an award or under the provisions of Chapter V-A of the Industrial Disputes Act, 1947. The provision contemplates computation of any benefit to which he might be entitled in his character as workman. In order to reinforcement his submissions, the learned counsel for the petitioner has placed reliance on the opinion of the Madras High Court in the case of Railway Employees Co-operative Bank, Ltd. P.T. Madras Vs. The Presiding Officer, Labour Court, Madras and Another, AIR 1960 Mad 345 : (1960) 1 FLR 164 : (1960) 2 LLJ 215 : (1960) 73 LW 278 .

6. I have heard the learned counsel for the petitioner and with their assistance perused the materials available on record.

7. I have carefully considered the impugned order passed by the Labour Court-1 Jaipur, declining the application of the petitioner-workman under Section 33-C(2).

8. By now, it is well settled that the jurisdiction of the forum provided under the Industrial Disputes Act, 1947, while dealing with an application under Section 33-C(2), is in the nature of execution proceedings. Moreover, in the instant case at hand, the relationship between the parties itself was a matter of dispute, which was raised and the conciliation officer submitted as failure report to the appropriate government.

9. The learned counsel admitted the fact that the State Government has declined to make a reference of the dispute raised by the petitioner for after having examined the failure report submitted by the conciliation officer, the State Government was of the opinion that the matter was not one which fell within ambit of "industrial dispute", under the Act of 1947.

10. It hardly needs reiteration that there has to be a pre-existing right either adjudicated upon or by virtue of a contract or in view of any enactment; preceding the right to invoke the jurisdiction of the Labour Court/Industrial Tribunal under Section 33-C(2) of the Act of 1947.

11. The opinion of the Madras High Court as referred to and relied upon by the learned counsel for the petitioner in the case of Railway Employees Cooperative Bank (supra), is a case where the reasoning was putforth while comparing the provisions of Section 33-C(2) of the Act of 1947, with Section-20 of the Industrial Disputes (Appellate Tribunal), Act of 1950, which reads thus:--

"(1) Any money due from an employer under any award or decision of an industrial tribunal may be recovered as arrears of land revenue or as a public demand by the appropriate Government on an application made to it by the person entitled to the money under that award or decision.

(2) Where any workman is entitled to receive from the employer any benefit under an award or decision of an industrial tribunal which is capable of being computed in terms of money, the moment at which such benefit should be computed may, subject to the rules made under this Act, be determined by that industrial tribunal, and the amount so determined may be recovered as provided for in sub-s. (1).

(3) For the purpose of computing the money value of a benefit the industrial tribunal may, if it so thinks fit, appoint a Commissioner, who shall, after taking such evidence, as may be necessary submit a report to the Industrial Tribunal, and the said tribunal shall determine the amount after considering the report of the Commissioner and other circumstances of the case."

12. Having compared the provisions of two Sections i.e. Section 33-C(2) of the Act of 1947 and Section 20(2) of the Appellate Tribunal Act, 1950, the Court found some substance in the submission that the jurisdiction under Section 33-C(2) also extends for the purpose of computation of any "benefit" which a workman might be entitled to in the his character as workman under a contract or by virtue of any enactment. Thus, even while comparing the two provisions under two different legislations, the Court specifically restricted the jurisdiction for computation of any "benefit" under a contract or by virtue of any other "enactment".

13. In the instant case at hand, the very relationship of the petitioner with the employer in the capacity and character of a workman, which was the subject matter of a "dispute" before the conciliation officer and on a failure report

submitted to the State Government; the State Government has not treated the "dispute" to be an "industrial dispute", within the ambit of the Act of 1947.

14. Be that as it may, the controversy raised may not detained this Court for long for the reason that a bare perusal of the text of Section 33-C(2) of the Act of 1947, abundantly makes it clear that it takes into it's ambit, only the cases where the workman who claimed the benefit, for computation, in terms of money, is with reference to a pre-existing right, even though, the right to the benefit, for which the claim is made is "disputed" by the employer. Further, sub-section (3), sounds very strange for it contemplates for appointment of Commissioner by the Labour Court, who shall, after taking such evidence as may be necessary, submit a report to the Labour Court, who shall determined the amount after considering the report of the Commissioner and other circumstances. The provision becomes meaningful and serves the purpose only for a partial assignment, having regard to the nature of the benefit to be computed. Thus, what can be claimed under Section 33-C(1), is only the claim arising out of a settlement, an award or admissible under the relevant provisions of Chapter V-A. However, these words of limitations are missing under Section 33-C(2) to that extent, and thus, the scope under Section 33-C(2) is wide than that of Section 33-C(1). Thus, from the scheme of the provisions of the Section 33-C(2), it is evident that even after the computation is made by the Labour Court under Section 33-C(2); the execution goes back to Section 33-C(1) and it is for this reason Section 33-C(2) contemplates determination of an amount that may be recovered as provided for under Section 33-C(1).

15. In the case of National Building Construction Corporation Vs. Pritam Singh Gill and Others, AIR 1972 SC 1579 : (1972) 2 SCC 1 : (1973) 1 SCR 40 ; a three Judge Bench of the Hon'ble Supreme Court referring to the earlier judgments, detailing out the purpose and objects of Section 33-C(2) of the Act of 1947, held thus:

"Keeping this in mind we may turn to the purpose and object of Section 33-C of the Act. This section was enacted for the purpose of enabling individual workman to impleadment, enforce or execute their existing individual rights against their employers without being compelled to have recourse to Section 10 by raising disputes and securing a reference which is obviously a lengthy process. Section 33-C of the Act has accordingly been described as a provision which clothes the Labour Court with the powers similar to those of an existing court so that the workman concerned receives speedy relief in respect of his existing individual rights. The primary purpose of the section being to provide the aggrieved workman with a forum similar to the executing courts, it calls for a broad and beneficial construction consistently with other provisions of the Act, which should serve to advance the remedy and to suppress the mischief. It may appropriately be pointed out that the mischief which Section 33C was designed to suppress was the difficulties faced by individual workmen in getting relief in respect of their existing rights without having resort to Section 10 of the Act."

16. In the case of State Bank of India Vs. Ram Chandra Dubey and Others, (2000) 87 FLR 849 : (2000) 2 JT 590 Supp : (2000) 2 LLJ 1660 : (2000) 7 SCALE 420 : (2001) 1 SCC 73 : (2001) SCC(L&S) 3 : (2001) 1 UJ 290 : (2000) AIRSCW 4176 : (2000) 7 Supreme 545 ; the Hon"ble Supreme Court, held thus:--

"7. When a reference is made to an Industrial Tribunal to adjudicate the question not only as to whether the termination of a workman is justified or not but to grant appropriate relief, it would consist of examination of the question whether the reinstatement should be with full or partial back wages or none. Such a question is one of fact depending upon the evidence to be produced before the Tribunal. If after the termination of the employment, the workman is gainfully employed elsewhere it is one of the factors to be considered in determining whether or not reinstatement should be with full back wages or with continuity of employment. Such questions can be appropriately examined only in a reference. When a reference is made under Section 10 of the Act, all incidental questions arising thereto can be determined by the Tribunal and in this particular case, a specific question has been referred to the Tribunal as to the nature of relief to be granted to the workmen."

17. In the case of State of Uttar Pradesh and Another Vs. Brijpal Singh, AIR 2006 SC 3592 : (2005) 5 CTC 45 : (2005) 107 FLR 604 : (2005) 12 JT 498 : (2005) 8 SCC 58 : (2005) SCC(L&S) 1081 : (2005) 1 SCR 633 Supp : (2006) 1 SLJ 131 ; another three judge bench of the Hon"ble Supreme Court, dealing with the somewhat similar controversy, held thus:--

"10. It is well settled that the workman can proceed under Section 33-C(2) only after the Tribunal has adjudicated on a complaint under Section 33A or on a reference under Section 10 that the order of discharge or dismissal was not justified and has set aside that order and reinstated the workman. This Court in the case of Punjab Beverages (P) Ltd. v. Suresh Chand held that a proceedings under Section 33-C(2) is a proceeding in the nature of execution proceeding in which the Labour Court calculates the amount of money due to a workman from the employer, or, if the workman is entitled to any benefit which is capable of being computed in terms of money, proceeds to compute the benefit in terms of money. Proceeding further, this Court held that the right to the money which is sought to be calculated or 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 the industrial workman, and his employer. This Court further held as follows: (SCC p.150, para 4)

"It is not competent to the Labour Court exercising jurisdiction under Section 33-C(2) to arrogate to itself the functions of an Industrial Tribunal and entertain a claim which is not based on an existing right but which may appropriately be made the subject-matter of an industrial dispute in a reference under Section 10 of the Act."

11. In the case of *Municipal Corpn. Of Delhi v. Ganesh Razak* this Court held as under. (SCC pp.241-42, paras 12-13)

"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.

13. In these matters, the claim of the respondent workmen who were all daily-rated/casual workers, to be paid wages at the same rate as the regular workers, had not been earlier settled by adjudication or recognition by the employer without which the stage for computation of that benefit could not reach. The workmen's claim of doing the same kind of work and their entitlement to be paid wages at the same rate as the regular workmen on the principle of "equal pay for equal work" being disputed, without an adjudication of their dispute resulting in acceptance of their claim to this effect, there could be no occasion for computation of the benefit on that basis to attract Section 33-C(2). The mere fact that some other petitions under Article 32 of the Constitution is indicative of the need for adjudication of the claim of entitlement to the benefit before computation of such a benefit could be sought. Respondents' claim is not based on a prior adjudication made in the writ petitions filed by some other workmen upholding a similar claim which could be relied on as an adjudication enuring to the benefit of these respondents as well. The writ petitions by some other workmen to which some reference was casually made, particulars of which are not available in these matters, have, therefore, no relevance for the present purpose. It must, therefore, be held that the Labour Court as well as the High Court were in error in treating as maintainable the applications made under Section 33-C(2) of the Act by these respondents."

12. In the case of *State Bank of India v. Ram Chandra Dubey* this Court held as under: (SCC pp.77-78, paras 7-8)

"7. When a reference is made to an Industrial Tribunal to adjudicate the question not only as to whether the termination of a workman is justified or not but to grant appropriate relief, it would consist of examination of the question whether the reinstatement should be with full or partial back wages or none. Such a question is one of fact depending upon the evidence to be produced before the

Tribunal. If after the termination of the employment, the workman is gainfully employed elsewhere it is one of the factors to be considered in determining whether or not reinstatement should be with full back wages or with continuity of employment. Such questions can be appropriately examined only in a reference. When a reference is made under Section 10 of the Act, all incidental questions arising thereto can be determined by the Tribunal and in this particular case, a specific question has been referred to the Tribunal as to the nature of relief to be granted to the workmen.

8. The principles enunciated in the decisions referred by either side can be summed up as follows: 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 33-C(2) of the Act. The benefit sought to be enforced under Section 33-C(2) of the Act is necessarily a preexisting 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 jurisdiction of Labour Court exercising powers under Section 33-C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages."

13. Thus, it is clear from the principle enunciated in the above decisions that the appropriate forum where question of back wages could be decided is only in a proceeding before a forum to whom a reference under Section 10 of the Act is made. Thereafter, the Labour Court, in the instant case, cannot arrogate to itself the functions of an Industrial Tribunal and entertain the claim made by the respondent herein which is not based on an existing right but which may appropriately be made the subject-matter of an industrial dispute in a reference under Section 10 of the ID Act. Therefore, the Labour Court had no jurisdiction to

adjudicate the claim made by the respondent herein under Section 33-C(2) of the ID Act in an undetermined claim and until such adjudication is made by the appropriate forum, the respondent workman cannot ask the Labour Court in an application under Section 33-C(2) of the ID Act to disregard his dismissal as wrongful and on that basis to compute his wages. It is, therefore, impossible for us to accept the arguments of Mrs. Shyamla Pappu that the respondent workman can file application under Section 33-C(2) for determination and payment of wages on the basis that he continues to be in service pursuant to the said order passed by the High Court in Writ Petition No. 15172 of 1987 dated 28.10.1987. The argument by the learned counsel for the workman has no force and is unacceptable. The Labour Court, in our opinion, has erred in allowing the application filed under Section 33-C(2) of the ID Act and ordering payment of not only the salary but also bonus to the workman although he has not attended the office of the appellants after the stay order obtained by him. The Labour Court has committed a manifest error of law in passing the order in question which was rightly impugned before the High Court and erroneously dismissed by the High Court. The High Court has also equally committed a manifest error in not considering the scope of Section 33-C(2) of the ID Act. We, therefore, have no hesitation in setting aside the order passed by the Labour Court in Misc. Case No. 11 of 1993 dated 23.8.1995 and the order dated 9.1.2002 passed by the High Court in CMWP No. 36406 of 1995 as illegal and uncalled for. We do so accordingly."

18. On a survey of the various judgments of the Hon"ble Supreme Court, the principles propounded leads to the conclusion 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 but he has been denied of such benefit can approach the Labour Court/Industrial Tribunal under Section 33-C(2) of the Act of 1947. Any money or benefit due which is sought to be enforced by institution of proceedings under Section 33-C(2) of the Act of 1947, must necessarily be flowing out of a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing "right" or a "benefit" and the "right" or "benefit", which is just and fair, is of vital importance, the case falling under the category of a pre-existing right or benefit is enforceable and later cannot be enforced invoking jurisdiction under Section 33-C(2) of the Act of 1947. Moreover, even in a case of award if the specific question of the relief granted is confined only to reinstatement without stating anything more as to the back wages. The relief gets denied in the judicial or quasi-judicial proceedings in absence of any direction with reference to back wages.

19. Be that as it may, any question which arises as to determination of back wages, various relevant facts and circumstances are requires consideration and are to be considered, in a judicious manner. Therefore, The appropriate forum wherein such a question of back wages could be determined would only be a proceeding to whom a reference under Section 10 of the Act of 1947, is made.

By now, it is well settled that the workman can proceed under Section 33-C(2) only after an adjudication made on a reference under Section 10 of the Act of 1947. Where the discharge or dismissal was not justified and has been set aside with an order for reinstatement of the workman or where a complaint under Section 33-A has been adjudicated upon, the forum while exercising jurisdiction under Section 33-C(2) cannot arrogate to itself, the functions of an adjudicatory forum by entertaining a claim which is not based on a pre-existing right but which may appropriately be made, is a subject matter of an industrial dispute.

20. For the reasons and discussions herein above, as well as in view of the settled preposition of law, as declared by the Hon"ble Apex Court of the land, the impugned order passed by the Labour Court-1, Jaipur, cannot be faulted.

21. The writ petition is devoid of any substance and lacks in merit, and therefore, deserves to be dismissed.

22. Ordered accordingly.

23. However, in the facts and circumstance of the case, there shall be no order as to costs.