

**(2004) 08 DEL CK 0088**

**In the Delhi High Court**

**Case No : Writ Petition (C) No. 328 of 2002**

Pratap Singh

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

**Date of Decision : 03-08-2004**

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Industrial Disputes Act, 1947 — Section 33C(1), 33C(2)

**Citation :** (2005) 116 DLT 123 : (2006) 1 SLJ 330

**Hon'ble Judges :** Madan B. Lokur, J

**Bench :** Single Bench

**Advocate :** Sanjoy Ghosh, for the Appellant; Rajiv Shakdhar, for the Respondent

## **Judgement**

Madan B. Lokur, J.—Pursuant to an Award dated 27th February, 2001 passed by the learned Central Government Industrial Tribunal (the Tribunal) the petitioner moved an application u/s 33C(I) of the Industrial Disputes Act, 1947 for payment of back wages but by the impugned order dated 12th July, 2001 the petitioner was told to have the amount computed u/s 33C(2) of the Act.

2. The operative portion of the Award passed by the learned Tribunal reads as follows:

"20. In view of the matter I find and held that the termination of the service of the workman was void and inoperative and it is declared that the workman shall be in continuous service with all consequential benefits with full back wages accessible to him under law. The terms of reference is replied accordingly and the award is given in the like manner."

3. Section 33C(I) of the Act reads as follows:

"33C. Recovery of Money Due from an Employer-(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter VA or Chapter VB the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the

workman, his assignee or heirs may, without prejudice to any other mode or recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue;

Provided that xxx xxx xxx

Provided further that xxx xxx xxx"

4. A perusal of the above provision makes it clear that when an Award is passed in favor of a workman, as in the present case, the workman is entitled to make an application to the appropriate Government for recovery of the money due to him in terms of the Award. If the appropriate Government is satisfied that any money is due to the workman, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same as arrears of land revenue.

5. Admittedly, there was an Award in the present case in favor of the workman for payment of back wages to him. As such, there was some money due to the petitioner. All that the appropriate Government had to do was to satisfy itself that some amount was due to the petitioner. Thereafter, the appropriate Government was required to see whether the amount claimed is as per the Award and as certain whether the workman has claimed is as per the Award and as certain whether the workman has claimed any amount other than back wages awarded by the learned Tribunal. This is purely an arithmetical exercise.

Instead of so satisfying itself, the appropriate Government directed the petitioner to approach the learned Tribunal u/s 33C(2) of the Act, which reads as follows:

"33C. Recovery of Money Due from an Employer

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months.

Provided that xxx xxx xxx"

6. It is clear that Section 33C(2) of the Act does not apply in cases where there is an Award or a settlement unlike Section 33C(1) of the Act. Sub-section (2) would come into play if the workman claims an amount over and above what is determined by the appropriate Government u/s 33C(5) of the Act. In other words, applying this interpretation to the present case, the appropriate Government has first to exercise its powers u/s 33C(1) of the Act and if any dispute remains thereafter, the workman will have to resort to Section 33C(1) of

the Act to recover any balance which, according to the workman, is due to him over and above what is determined u/s 33C(1) of the Act.

7. In the present case, the appropriate Government completely abdicated its function u/s 33C(1) of the Act and straightaway directed the petitioner to move an application u/s 33C(2) of the Act. No reason has been given for this arbitrary exercise of power.

8. Learned Counsel for the Respondents submitted that the Award does not quantify the back wages nor does it indicate what the back wages were and it is for this reason that the appropriate Government asked the workman to proceed u/s 33C(2) of the Act. In this context, it may be noted that the quantum of back wages was not an issue before the learned Tribunal and, Therefore, there was no obligation on the part of the learned Tribunal to specify what were the wages due to petitioner. Under the circumstances, the contention of learned Counsel for the respondents is not tenable and is Therefore, rejected.

9. Consequently a writ of mandamus is issued to the respondents to exercise their power u/s 33C(1) of the Act and quantify the wages due to the petitioner under the Award dated 27th February, 2001. The quantification be carried out within a period of six weeks from today.

The writ petition stands disposed of in view of the above.