
(2018) 07 MP CK 0018
In the Madhya Pradesh High Court
Case No : Writ Appeal No.837 Of 2018

Secretary, Public Works Department and others

APPELLANT

Vs

Halke

RESPONDENT

Date of Decision : 03-07-2018

Acts Referred:

Madhya Pradesh Uchcha Nayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005 —
Section 2(1)
Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (2018) 07 MP CK 0018

Hon'ble Judges : ASHOK KUMAR JOSHI, J; SANJAY YADAV, J

Bench : Division Bench

Advocate : Praveen Newaskar

Final Decision : Dismissed

Judgement

This appeal under Section 2(1) of Madhya Pradesh Uchcha Nayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005, is directed against the order

dated 31.07.2017 passed in Writ Petition No.3649/2017 whereby the challenge to order dated 19.09.2016 passed by the Labour Court on an

application under Section 33 C(2) of the Industrial Disputes Act, 1947 has been negated.

The facts giving rise to the controversy briefly are that, the respondent while engaged as daily wager with the appellant on 01.04.1983 was dispensed

with from service w.e.f 15/07/1999. The industrial dispute raised by him culminated into passing an award on 20.04.2012 of reinstatement with

continuity in service but without backwages. The respondent promptly reported on duty but the joining was belated till 22.09.2014. As the respondent

was not paid the wages for the period from 20.04.2012 to 21.09.2014, he preferred an application under Section 33C(2) of 1947 Act for wages for the

said period. The Labour Court after taking into consideration the claim, counter-claim and the material evidence on record held the respondent

workmen entitled for the wages from 01/08/2013 to 21/09/2014 at the rate of Rs.2,500/-per month, total Rs.1,10,882/- and Rs.20,900/-towards special

wages @ Rs.2,500/- per month from 22/09/2014 to 31/05/2015 in consonance with the decision by the State Government to give special wages at the

rate of Rs.1,500/- per month to those daily wagers having completed 10 years of continuous service and Rs.2,500/- to those who completed 20 years

of continuous service.

The impugned order is questioned on the anvil of the jurisdiction of Labour Court in computing arrears towards wages and special pay. It is urged that

the jurisdiction of Labour Court under Section 33 C (2) of 1947 Act is only to the extent of execution of adjudicated claim.

Section 33 C (2) of 1947 Act stipulates:-

â??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 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 where the presiding officer of a Labour Court considers it necessary or expedient so to do, he

may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.â??

Dwelling upon the scope of Section 33 C (2) of 1947 Act, it is held in â??Municipal Corporation of Delhi v. Ganesh Rajak: (1995) 1 SCC 235â??:-

â??12-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 under Section 33C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution.â??

In â??State of Uttar Pradesh & another v. Brijpal Singh (2005) 8 SCC 58â??, it is observed :-

10. It is well settled that the workman can proceed under Section 33C(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 Pvt. Ltd. Vs. Suresh Chand, (1978) 2 SCC 144 held that a proceeding under Section 33C(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: "It is not competent to the Labour Court exercising

jurisdiction under Section 33C(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.

In *Krishnan and another v. Special Officer, Vellore Cooperative Sugar Mill and another* (2008) 7 SCC 22, it is observed:

12.The fact that proceedings under Section 33C(2) are in the nature of execution proceedings is in no doubt, and such proceedings

presuppose some adjudication leading to the determination of a right, which has to be enforced. Concededly there has been no such adjudication in the

present case. It will be seen that the reliance of the appellant workmen is exclusively on documentary evidence placed on record which consisted

primarily of the punch time cards and the representations that had been filed from time to time before the respondents. It is also true that the claim

raised by the appellants had been hotly disputed by the respondents. The question that arises in this situation is whether reliance only on the

documentary evidence was sufficient to prove the case. 13. We are of the opinion that the reference to Municipal Corporation's case (*supra*) is

completely misplaced as in that matter, the fact that different categories of workers were doing identical kind of work was virtually admitted but

different scales of pay were nevertheless being paid to them. It is also relevant that oral evidence had been adduced by the workmen to supplement

the documentary evidence and it was in that situation that the Court felt that an application under section 33C(2) was maintainable.â??

Evidently, from the principle of law laid down in Ganesh Rajak (supra), Brijpal Singh (supra) and Krishnan and another (supra), it is within the

competence of the Labour Court on an application under Section 33C(2) of 1947 Act to compute the amount of money due to a workman from the

employer, which includes the computation of benefit as per the policy of the State by applying the same in case of respondent workman who having

been given the continuity of service, the Special Pay.

When facts of the present case are tested on the anvil of these principles that having been directed to be reinstated with continuity of past services,

we are of the considered opinion that it was within the competence of the Labour Court to have computed the benefit which enures from the policy

decision of the State Government for grant of Special Pay to such workmen/daily wagers who have completed 10/20 years of regular service. The

impugned order cannot be faulted with.

Consequently, appeal fails and dismissed. No costs.