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**(2011) 02 AHC CK 0307**  
**In the Allahabad High Court**  
**Case No : Writ C No. 27934 of 1997**

Singh Engineering Works (P) Ltd.

APPELLANT

Vs

Labour Court-V and Others

RESPONDENT

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**Date of Decision :** 11-02-2011

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 33C

**Citation :** (2011) 3 ADJ 675 : (2012) 1 AWC 350 : (2011) 129 FLR 207 : (2011) 4 LLJ 173 : (2011) 1 UPLBEC 647

**Hon'ble Judges :** Sibghat Ullah Khan, J

**Bench :** Single Bench

**Final Decision :** Disposed Of

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## Judgement

Sibghat Ullah Khan, J.—Heard learned Counsel for the parties.

2. This writ petition is directed against judgment and order dated 27.06.1997 passed by Presiding Officer Labour (V) Kanpur in Misc. case No. 32 of 1992 Ram Raj and Ram Din u/s 33C(2) of Industrial Disputes Act. The case of the workmen Ram Raj and Ram Deen Respondent Nos. 2 and 3 was that services of several workmen including the applicants were terminated by the Petitioner on 31.12.1969 regarding which Industrial Dispute was raised (Adjudication case No. 106 of 1970). The reference was decided in favour of the workmen on 31.07.1975 against which a writ petition was filed in this Court being writ petition No. 1403 of 1976 in which an interim order was passed on 20.05.1976 staying operation of the award challenged therein. Thereafter on 20.01.1983 writ petition was dismissed on the ground that Petitioner employer had stated that all the 13 workmen had accepted monetary benefit/compensation in lieu of the benefits under the award. The names of Respondent Nos. 2 and 3 were at serial Nos. 2 and 3. Respondent No. 2 and 3 had earlier filed two cases u/s 33C of Industrial Disputes Act (R.D. Case No. 97/90 and 98/99) which were dismissed on 08.10.1991 on the ground that first there must be computation. Thereafter, they filed the case u/s 33C(2) which was decided by the impugned order through

which, labour Court allowed their application and directed that an amount of Rs. 53135.66 shall be paid to each of the applicants/contesting Respondents in this writ petition.

According to the impugned judgment and order this was the amount payable to each applicant from 01.01.1970 to 31.12.1989.

3. In this writ petition an interim order was passed on 27.08.1997 to the effect that "Meanwhile the award passed by the labour court shall remain in abeyance provided that the amount awarded would be deposited by the Petitioner with the registrar of this Court within a month. Thereafter, there is an endorsement on the backside of page 1 of the writ petition that an amount of Rs. 106272/- was deposited with the registrar on 25.09.1997.

4. The applicants before the labour court contended that no compromise had taken place in between them and the employee.

5. Firstly the application u/s 33C(2) was not maintainable for getting the benefit of an award. The only provision is 33C(1). Sub-sections (1) and (2) of Section 33C of Industrial Dispute Act are quoted below:

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 of 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 a 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 every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(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.

6. The labour Court held that employer failed to prove that any compromise had taken place in between it and the Respondents Nos. 2 and 3 and that it had paid any amount to them.

7. Respondents Nos. 2 and 3 had also filed cases u/s 33C(1) before Additional Labour Commissioner Kanpur in the form of R.D. Case No. 48 of 1986 and 49 of 1986. The subsequent cases i.e. R.D. Case No. 97 of 1990 and 98 of 1990 were decided by Additional Labour Commissioner Kanpur on 08.10.1991 directing that first applicants must get the payable amount computed from competent court. The said order was not correct and the applicants/Respondent Nos. 2 and 3 should have challenged the same.

8. In any case after dismissal of the writ petition 6 against the award on 20.01.1983, contesting Respondent did not make any effort to join the duty. This was fatal in view of Supreme Court judgment reported in State of Uttaranchal and Another Vs. Sunil Kumar Singh Negi,

Accordingly, impugned order deserves to be set aside.

9. However, Supreme Court in Haryana Urban Development Authority Vs. Om Pal, has held that even if workman is not legally entitled to any relief still some damages may be awarded to him. In the instant case, the earlier writ petition filed by the employer against the award of reinstatement with back wages was dismissed on the statement of the employer only that all the affected workmen had accepted the monetary benefit. Respondents No. 2 & 3 filed applications thrice. Twice the applications were rejected by the Assistant Labour Commissioner on the ground that they were not maintainable u/s 33C(1), 7 of Industrial Disputes Act, the provision under which they had been filed. Thereafter, they filed application u/s 33C(2), which was allowed through impugned order, however the said order has been found to be not warranted u/s 33C(2) of the Act by me in this judgment. In this scenario I feel that interest of justice and equity, which is paramount consideration while exercising writ jurisdiction require that awarded amount must be apportioned between the employer and the workmen. Accordingly, it is directed that out the deposited amount of Rs. 53135.66, in case of each workman, each workman shall get Rs. 20,000/- and the remaining amount of Rs. 33135.66 in respect of each workman shall be returned to the Petitioner employer.

10. Writ petition is accordingly disposed of.