

(2008) 06 GUJ CK 0026

In the Gujarat High Court

Case No : Special Civil Application No. 7819 of 2008

The Manager, Naaz Cinema

APPELLANT

Vs

Vasantben Rameshbhai Ghumadiya

RESPONDENT

Date of Decision : 18-06-2008

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 9
Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10, 10(1), 10(1)(C), 11(1), 12(5)
Payment of Bonus Act, 1965 — Section 10, 11, 2(21), 22, 8

Citation : (2008) 3 GLR 2431

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : J.V. Japee, for the Appellant; Ashish H. Shah, for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

H.K. Rathod, J.—Heard learned advocate Mr. J.V. Japee appearing on behalf of petitioner and learned advocate Mr. Ashish H. Shah appearing on behalf of respondent.

2. Law abiding person facing many difficulties when the person gets justice from the Court. In the facts and circumstances of the present case, it is very unfortunate situation that undisputed claim of the workman challenged by employer with all legal and technical aspects that workman is not entitled this amount and Labour Court has committed an error in granting such benefit. How the Court machineries are being utilised for unnecessary legal fight between two unequal. This is a clear example of such a situation.

3. In the present petition, according to prayer made by petitioner in Para 14-A, order dated 4th December 2007 passed by Labour Court in Recovery Application No. 80 of 2006 is challenged which is at Page 35.

4. Learned advocate Mr. J.V. Japee raised following contentions before this Court:

(i) The Labour Court being an Executing Court has no jurisdiction to grant interest.

(ii) The Labour Court has not condoned the delay as no prayer is made by the workman though application u/s 33-C-1 was filed after a period of one year.

(iii) Leave Encashment claimed by the workman in Recovery Application is covered by Schedule-Third and not by Schedule-Second, therefore, Labour Court has no jurisdiction to grant such amount.

5. He has relied upon the decision of Apex Court in case of H.P. State Electricity Board and Another Vs. Ranjeet Singh and Others, in case of Punjab State and Ors. v. Harvinder Singh reported in 2008 SCCL. COM 223 and in case of Gujarat State Road Transport Corporation Limited v. Kantilal Balshanker Patel reported in 2002 (0) GLHEL 204220.

6. The aforesaid decisions have been relied upon in support of his submissions.

7. Learned advocate Mr. Ashish H. Shah supported the decision of Labour Court.

8. I have perused the papers annexed to the petition by the petitioner and I have also perused the order passed by Labour Court in Recovery Application No. 80 of 2006 dated 4th December 2007. The workman was working as Sweeper with the petitioner as a permanent employee. His service was terminated on 1st May 1983 by the petitioner, then, he raised industrial dispute before the Labour Court, Nadiad being a Reference No. 1080 of 1983 which has been decided by the Labour Court in favour of workman. The Labour Court granted reinstatement with 75% back wages of interim period from 1st May 1983 to 16th June 1992. Against this award, one Review Application was filed by the petitioner which was ultimately withdrawn by the petitioner, but, one fact is admitted by the petitioner before the Labour Court as well as before this Court that award in question is not set aside by the higher forum or Labour Court and till date, award remains intact.

9. According to learned advocate Mr. Japee that respondent workman was working in Municipal Corporation and therefore, he was not interested in job, but, workman is entitled for the wages as per direction issued by Labour Court for the period from 1st May 1983 to 16th June 1992. Earlier, workman had filed an application under the Payment of Wages Act which was dismissed on the ground that Recovery Application is filed by the workman u/s 33-C-1 of the Industrial Disputes Act, 1947. In Recovery Application, claim was Rs. 41,106/- with 18% interest and with cost of Rs. 3,000/-. Before the Labour Court, petitioner had filed reply vide Exh. 7 and raised certain contentions that Labour Court has no jurisdiction. There was no certain amount mentioned in the award, therefore, Labour Court cannot pass such order as claimed by respondent.

10. It is necessary to note that before the Labour Court, workman had claimed the interest in the application itself. No such contention was raised by the

petitioner before the Labour Court that Labour Court has no jurisdiction to grant interest. No such contention was raised by petitioner before the Labour Court that leave encashment is covered by Schedule-Third of the Industrial Disputes Act, 1947 and not by Schedule-Second. The reply Exh. 7 admitting the legality and validity of award in question and it was made clear that according to award, workman is entitled 75% back wages for the period from 1st May 1983 to 16th September 1992. The Miscellaneous Application No. 31 of 2000 filed by petitioner which was withdrawn by petitioner. Ultimately, Labour Court framed the issue and before the Labour Court, the widow of deceased workman was joined as a party who was examined vide Exh. 13 and it is very important and relevant to note that learned advocate Mr. Japee has argued at length relying upon the Supreme Court decisions as well as decision of this Court, but, before the Labour Court, after widow was examined vide Exh. 13, no oral evidence was led by petitioner before the Labour Court. No documentary evidence was produced before the Labour Court, meaning thereby that except written statement vide Exh. 7 which was filed by petitioner, no dispute was raised by the petitioner before the Labour Court which has been raised before this Court for the first time by learned advocate Mr. Japee. Learned advocate Mr. Japee has raised the contention that u/s 33-C-1, Appropriate Government has power to decide such application and Labour Court has no power. In fact, Appropriate Government has delegated the power to Labour Court to decide such application u/s 33-C-1 of the Industrial Disputes Act, 1947 and long back i.e. on 21st April 1982, a notification was issued by Appropriate Government.

11. Apart from that a conduct of petitioner is very relevant, because, undisputed back wages of 75% for period specified in award not paid by petitioner. No efforts have been made by petitioner for making payment even after the death of the workman to the widow. On the contrary, petitioner having legal fight with the widow which total amount comes to round about Rs. 41,000/-. This is making clear the intention of the petitioner by not paying the legally due amount to widow after expiry of the workman concerned. The Labour Court has taken note of it that petitioner has not led any evidence to rebut the claim and not produced any documentary evidence before the Labour Court and considering the facts, delay has been condoned by the Labour Court and Labour Court has rightly observed the attitude of the petitioner to avoid the payment to the respondent workman. The calculation prepared by widow annexed to application, but, no counter calculation is prepared and produced by petitioner before the Labour Court and raising the contention that it must be for specific amount, therefore, Labour Court has relied upon the calculation prepared by the respondent, because, no counter calculation is placed on record by the petitioner. The Labour Court has considered that due amount from 15th June 1998 i.e. date of award is not paid to the respondent by the petitioner about more than ten years, therefore, Labour Court has granted interest amount to the respondent.

12. The power to grant interest is a discretionary power of the Labour Court. Order XXI of the CPC is not applicable to the Labour Court proceedings. The

decision of Apex Court in case of Punjab State and Ors. (supra) as referred above is in respect to original decree where the interest was not awarded and Executing Court has granted it is not applicable to the facts of this case.

13. In this case, facts are very clear that award passed by Labour Court on 15th June 1998 granted 75% backwages in favour of workman not paid till the death of workman and even after death of the workman, no mercy has been shown by the petitioner to make the payment to widow. On the contrary, a legal fight has been started against the widow knowing fully well that this amount has been due in favour of widow. Therefore, Labour Court has considered that attitude and conduct of the petitioner is not clear and proper to fight with widow raising technical contention and therefore, Labour Court has granted 9% interest for the period for 9 years and 4 months against the due amount while exercising the discretionary power, according to my opinion, is perfectly justified.

14. Section 33-C-1 is incorporated with an object that if any amount of the workman is due against the employer based on settlement and award and not paid by the employer, then, workman can immediately approach to the concerned Labour Court for demanding such amount with interest because of delayed payment without justification. In this case, payment is not made to the workmen by the employer without any justification. For employer, there is no justification for not paying the amount which was legally due in favour of respondent. Therefore, every Court has inherent power to pass appropriate order considering the facts and circumstances of the case. Therefore, Labour Court has rightly granted the interest amount in favour of respondent workman.

15. Leave encashment is a part of wages not available to the workman which dispute was not raised by the petitioner before the Labour Court. Therefore, workman has rightly calculated the amount of leave encashment along with backwages. For that, Labour Court has rightly granted it, because, employer has not raised any contention before the Labour Court that leave encashment amount is not covered by wages and it covered by Schedule-Third not by Schedule-Second. A jurisdictional question not raised before the Labour Court and Labour Court has examined the matter. Now, for the first time, a question raised only being a technical one, but, according to my opinion, in wages definition, a leave encashment is covered, therefore, there is no separate claim over and above the wages made by the workman. Therefore, once the part of the wages is covered inclusive of leave encashment amount, then, question of Schedule-Third to be examined does not arise.

16. Therefore, the decisions which has been relied upon by learned advocate Mr. Japee are not applicable to the facts of this case and not helpful to him or his arguments. Naturally, this Court cannot entertain such challenge against the undisputed due amount of the respondent.

17. It is necessary to note one important aspect that how the challenge is made by the lawyer of order in question when no such contention is raised by the

petitioner before the Labour Court.

18. In light of aforesaid background, according to my opinion, Labour Court has rightly granted the amount of back wages with 9% interest with cost of Rs. 3,000/- and total comes to Rs. 79,188/-, for that, Labour Court has not committed any error while exercising the power u/s 33-C-1 of the Industrial Disputes Act, 1947.

19. Learned advocate Mr. Japee has not pointed out the error committed by Labour Court while passing such order. Normally, petition is filed challenging the order and award of the Labour Court, then, petitioner shall have to point out the error on the part of the Labour Court committed while passing such order and award. In this case, without pointing out any error committed by Labour Court, straightway, the arguments has advanced that these are the points which are not considered by the Labour Court as if that, these are the contentions raised before the Labour Court and not considered or dealt with by the Labour Court.

20. Learned advocate Mr. Japee raised contention that leave encashment claimed by workman is specified as Item No. 4 in Schedule Third, for which, only Industrial Tribunal has jurisdiction u/s 7A of the Industrial Disputes Act, 1947. The Labour Court has no jurisdiction to grant such relief relating to matter of Schedule Third. No doubt, such contention was not raised before the Labour Court and not raised in the present petition by the petitioner. However, he relied upon the recent decision of Apex Court in case of H.P. State Electricity Board and Anr. (supra). Before the Supreme Court, the same question was raised that claim of bonus is Item V in Schedule Third and not covered by Schedule Second. Therefore, Labour Court has no jurisdiction to grant the claim of bonus u/s 33(C) (2) and claim of bonus not covered in Schedule Second, the relevant observation made by Apex Court in Para 1 to 16 which is quoted as under:

1. These appeals involve an identical question and therefore are disposed of by common judgment.

2. The Himachal Pradesh High Court disposed of several writ petitions by a common judgment dated 30-12-1998. The primary issue was whether a petition in terms of Section 33-C(2) of the Industrial Disputes Act, 1947 (in short "the Act") is maintainable and whether daily wager can claim minimum bonus under the Payment of Bonus Act, 1965 (in short "the Bonus Act").

3. Factual position is almost undisputed and needs to be noted in brief:

The respondents were employed on daily-wage basis. The Labour Court by order dated 6-7-1991 held that the respective applicants were entitled to be paid minimum statutory bonus within the stipulated time. The decision was rendered on reference made.

4. Primary stand before the High Court was that daily wagers cannot get bonus. Additionally, the Labour Court has no jurisdiction to adjudicate such a matter. The High Court held that since there was a statutory obligations to pay minimum

bonus the application u/s 33-C(2) of the Act was maintainable.

5. In support of the appeals, learned Counsel for the appellants submitted inter alia as follows:

(i) The Labour Court has no jurisdiction to decide the issue.

(ii) The Bonus Act was not applicable.

6. The Act has application only when the employees concerned get salaries or wages per mensem. Dearness allowance is not payable to daily wagers. The reference to Section 8 of the Bonus Act to decide eligibility was not correct. Merely because a person is working for 30 days in a year that does not entitle him to bonus.

7. Stand of the appellants that Section 2(21) of the Bonus Act is applicable only to persons who receive monthly salary, has also not been dealt with.

8. The claim was made for the period from 1977 to 1986. But the application was filed long after in 1991. The High Court was wrong in saying that only the quantum and not the question of liability can be decided in a reference u/s 22. Section 33-C(2) is in the nature of execution application. Section 33-C(2) relates to pre-existing right and the claim for bonus cannot be included within the scope of Section 33-C(2) of the Act.

9. In Civil Appeals Nos. 87 of 2002, 8490 of 2001 and 331 of 2002 the grievance is that there was no claim for any interest. But the Labour Court and the High Court wrongly decided the entitlement of interest @12%.

10. Learned Counsel for the respondents submitted that Sections 10 and 11 of the Bonus Act deal with payment of minimum bonus. Section 22 of the Bonus Act used the expression "bonus payable." It relates to the quantum and varies between minimum and the maximum.

11. The High Court was right in holding that the application in terms of Section 33-C(2) of the Act was maintainable.

12. The scope and ambit of Section 33-C(2) has been examined by this Court in several cases.

13. In U.P. State Road Transport Corporation Vs. Shri Birendra Bhandari, it has been stated as under:

7. The benefit which can be enforced u/s 33-C(2) is a pre-existing benefit or one flowing from a pre-existing right.

8. In SBI v. Ram Chandra Dubey reported in (2001) 1 SCC 73 : 2001 SCC (L & S) 3 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 u/s 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 workman.

8. The principles enunciated in the decision 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 u/s 33-C(2) of the Act. The benefit sought to be enforced u/s 33-C(2) of the Act is necessarily a pre-existing 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 u/s 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 u/s 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.

The above position has also been highlighted in *Vijay Kumar and Others Vs. Whirlpool of India Ltd. and Others*,

14. In *Central Inland Water Transport Corporation Limited Vs. The Workmen and Another*, it was inter alia held as follows: (SCC pp. 701-02, para 13).

13. In a suit, a claim for relief made by the plaintiff against the defendant involves an investigation directed to the determination of (i) the plaintiff's right to relief; (ii) the corresponding liability of the defendant, including, whether the defendant is, at all, liable or not; and (iii) the extent of the defendant's liability, if any. The working out of such liability with a view to give relief is generally regarded as the function of an execution proceeding. Determination (iii) referred to above, that is to say, the extent of the defendant's liability may sometimes be left over for determination in execution proceedings. But that is not the case with the determinations under Heads (i) and (ii). They are normally regarded as the functions of a suit and not an execution proceeding. Since a proceeding u/s 33-C(2) is in the nature of an execution proceeding it should follow that an investigation of the nature of Determinations (i) and (ii) above is, normally, outside its scope. It is true that in a proceeding u/s 33-C(2), as in an execution proceeding, it may be necessary to determine the identity of the person by whom or against whom the claim is made if there is a challenge on that score. But there is merely incidental". To call Determinations (i) and (ii) "incidental" to an execution proceeding would be a perversion, because execution proceedings in which the extent of liability is worked out are just consequential upon Determinations (i) and (ii) and represent the last stage in a process leading to final relief. Therefore, when a claim is made before the Labour Court u/s 33-C(2) that court must clearly understand the limitations under which it is to function. It cannot arrogate to itself the functions say of an Industrial Tribunal which alone is entitled to make adjudications in the nature of Determinations (i) and (ii) referred to above, or proceed to compute the benefit by dubbing the former as 'incidental' to its main business of computation. In such cases Determinations (i) and (ii) are not 'incidental' to the computation. The computation itself is consequential upon and subsidiary to Determinations (i) and (ii) as the last stage in the process which commenced with a reference to the Industrial Tribunal. It was, therefore, held in *State Bank of Bikaner and Jaipur State Bank of Bikaner and Jaipur Vs. R.L. Khandelwal*, that a workman cannot put forward a claim in an application u/s 33-C(2) in respect of a matter which is not based on an existing right and which can be appropriately the subject-matter of an industrial dispute which requires a reference u/s 10 of the Act.

15. The case at hand belongs to Category (i) as elaborated in Central Inland Case.

16. Further, the High Court seems to have lost sight of the fact that the Labour Court under the Act can decide only the matters specified in the Second Schedule. "Bonus" is not covered by the Second Schedule. Item 6 of the Second Schedule says that it deals with all matters except those covered by the Third Schedule. "Bonus" appears as Item 5 in the Third Schedule. Therefore, the question of entitlement to bonus could not have been decided by the Labour Court. In case of pre-existing rights there must be agreements by both sides about existence of such rights. If there is disagreement this has to be decided by the competent authority. The stand that the expression "bonus payable" relates

to the quantum and not payability is also not correct.

21. In view of aforesaid submissions which are raised first time before this Court and not raised before Labour Court and in petition, even though, in the interest of justice, this Court is examining the legal issue raised by petitioner.

22. The aforesaid decision of Apex Court is binding to this Court, but, difficulty is, looking to Schedule Third and Schedule Second of the Industrial Disputes Act, 1947, almost, claim in respect to wages, leave with wages, leave encashment, allowances and bonus are covered under Schedule Third. Therefore, according to decision of Apex Court, a workman shall have to file recovery application for such claim u/s 33(C)(1) or u/s 33(C)(2) before the Industrial Tribunal not before the Labour Court. This amounts to unsettled practice and procedure which has been adopted in State of Gujarat for about more than 30 years on the basis of delegation of power by State u/s 39 of the Act to the Labour Court. Therefore, according to my humble opinion, the law prevailing at present and Labour Courts are entertaining the recovery applications in respect to wages, leave with wages, leave encashment, allowances and bonus, which will be unnecessarily disturbed because of legal and technical confusion. Therefore, Schedule Second and Schedule Third both are quoted as under:

Schedule Second (See Section 7)

Matters within the Jurisdiction of Labour Courts

1. The propriety or legality of an order passed by an employer under the standing orders;
2. The application and interpretation of standing orders;
3. Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed;
4. Withdrawal of any customary concession or privilege;
5. Illegality or otherwise of a strike or lock-out; and
6. All matters other than those specified in the Third Schedule.]

Schedule Third (See Section 7A)

Matters within the Jurisdiction of Industrial Tribunals

1. Wages, including the period and mode of payment;
2. Compensatory and other allowances;
3. Hours of work and rest intervals;
4. Leave with wages and holidays;
5. Bonus, profit sharing, provident fund and gratuity;

6. Shift working otherwise than in accordance with standing orders;
7. Classification by grades;
8. Rules of discipline;
9. Rationalisation;
10. Retrenchment of workmen and closure of establishment; and
11. Any other matter that may be prescribed.]

23. In view of aforesaid two Schedules which are pertaining to subject relating to dispute if it is raised by workman u/s 2A or if it is raised by Union, then, appropriate Government has power to refer such dispute according to Schedule to the concerned Labour Court or Industrial Tribunal. Therefore, these two Schedules are to be considered being a relevant only in case when appropriate Government exercise the power u/s 10 or u/s 12(5) of the Industrial Disputes Act, otherwise, subject of Schedule Second and Schedule Third has no relevancy at all for other proceedings to be filed under the provisions of the Industrial Disputes Act, 1947. The Labour Court u/s 33(C)(1) and u/s 33(C)(2) are exercising the power of appropriate Government and not exercising the original jurisdiction similar to reference made by appropriate Government, meaning thereby that, while entertaining the application by appropriate Government as provisions remain as it is, then, appropriate Government is not having any restriction for entertaining the recovery application either it may relate to Schedule Second or it may relate to Schedule Third, because, for that, there is no provision in the Act, but, a moment, Labour Court exercises such power u/s 33(C)(1) and u/s 33(C)(2) and then to consider Schedule Second and Schedule Third which creates a confusion and conflict with original powers of appropriate Government and original powers of Labour Court. In the scheme of the Act, the Labour Court is having original jurisdiction and some places, appropriate Government has original jurisdiction to deal with the subject matter. In a reference proceedings, Labour Court has original jurisdiction, but, in recovery proceedings, appropriate Government has original jurisdiction. This power of original jurisdiction has been delegation by appropriate Government to Labour Court while issuing notification u/s 39 and also exercising the power u/s 33(C)(2) delegating the power to Labour Court by the appropriate Government, then, Labour Court is not exercising original jurisdiction, but, on behalf of the appropriate Government, Labour Court is entertaining the recovery application, so, Labour Court is not having original jurisdiction u/s 33(C)(1) and u/s 33(C)(2), but, have the jurisdiction on the basis of delegation of power from appropriate Government. Therefore, the limitation of Schedule in filing the recovery application before the Labour Court u/s 33(C)(1) and u/s 33(C)(2) are not applicable and Labour Court, similar to appropriate Government, is entitled to entertain the recovery application in respect to claim/subject covered by Schedule Third irrespective of the fact that for reference in deciding the industrial dispute by adjudicating the process only, Industrial Tribunal has jurisdiction, but,

that will not apply to the proceedings u/s 33(C)(1) and u/s 33(C)(2) if it is filed before the Labour Court. In absence of aforesaid clarity or understanding, the provisions with the object of the Act, become nugatory. The remedy or quick remedy directly made available to the workman in respect to due amount based on award and settlement and under Chapter VA/VB or any benefit or claim due against the employer, which can be calculated in terms of money, can be filed by workman directly before the Labour Court. The Act provides speedy and immediate direct remedy to workman to claim such amount from the employer after filing the recovery application u/s 33(C)(1) and u/s 33(C)(2) and in case, if, amount is not paid after the order of the Labour Court, the Labour Court has power to issue recovery certificate in favour of District Collector concerned to recover such amount from employer under the provisions of the Bombay Land Revenue Code. If, we consider that Labour Court has no jurisdiction u/s 33(C)(1) and u/s 33(C)(2) to entertain the recovery application in respect to item pertaining to Schedule Third, then, whole object prescribing immediate and speedy remedy to workman becomes nugatory and object and purpose for enacting Section 33(C)(1) and Section 33(C)(2) will be frustrated. If, in recovery application u/s 33(C)(1) and u/s 33(C)(2) according to item specified in Schedule Third only, Industrial Tribunal has jurisdiction, then, power exercised by appropriate Government u/s 39 issuing notification in favour of Labour Court will also come in conflict and also power is exercised by appropriate Government u/s 33(C)(2) given to Labour Court by issuing notification also come in conflict. This legal complication and confusion will disturb the existing procedure and practice which is, at present, continue for more than 30 years in the State of Gujarat.

24. It is necessary to note that industrial dispute raised by Union or individual dispute raised by workman u/s 2A of the Industrial Disputes Act, 1947. On both the occasions, either industrial dispute raised by Union or individual dispute raised by workman u/s 2A, ultimately, appropriate Government has power to refer the dispute to the concerned Labour Court/Industrial Tribunal. The appropriate Government has also power u/s 12(5) to refer the dispute for adjudication to the Labour Court or Industrial Tribunal, means, on two occasions under the Act, power is given to appropriate Government to refer the industrial dispute for adjudication either to Labour Court or to Industrial Tribunal. At that occasion, it is necessary to consider the Schedule Second or Schedule Third. At the time of referring the dispute to the Labour Court, the appropriate Government has to consider Schedule Second and at the time when industrial dispute is referred to Industrial Tribunal, then, Schedule Third is relevant. Section 10(1) provides that where the dispute relates to any matter specified in Schedule Third is not likely to affect more than 100 workmen, the appropriate Government may, if, it is so thinks fit, make the reference to a Labour Court u/s 10(1)(C). Therefore, Schedule Second and Schedule Third are relevant only when industrial dispute is required to refer by appropriate Government to the concerned Labour Court or Industrial Tribunal. In other proceedings, for the jurisdiction of Labour Court or Industrial Tribunal, Schedule Second and Schedule

Third are not much relevant, meaning thereby that, except the appropriate Government decided to refer the dispute u/s 10(1)(C) or u/s 12(5), then, Schedule Second and Schedule Third is necessary for having the original jurisdiction of Labour Court or Industrial Tribunal. But, when recovery application is filed by workman u/s 33(C)(1) or u/s 33(C)(2), the Schedule Second and Schedule Third are not at all relevant and applicable to recovery proceedings, because, the power to entertain the recovery application is with appropriate Government not with Labour Court. The relevant Section 33(C)(1) and Section 33(C)(1) are quoted as under:

Section 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 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.

Section 33C(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.

25. Section 33(C)(1) suggests to file recovery application to the appropriate Government for the recovery of the money due to the workman and Section 33(C)(2) suggests such application is to be made under this Act be decided by such Labour Court as may be specified in this behalf by the appropriate Government. Therefore, appropriate Government has power to decide the recovery application if it is filed by workman u/s 33(C)(1) or u/s 33(C)(2), but, Labour Court has no jurisdiction at all to decide recovery application u/s 33(C)(1)

and u/s 33(C)(2). Therefore, when Labour Court has no jurisdiction as per provisions of Industrial Disputes Act to entertain the recovery application or to decide recovery application, then, Schedule Second or Schedule Third are not at all applicable to the recovery proceedings considering the scheme of the Act itself.

26. Section 39, where, appropriate Government have power to delegate his power exercisable by it under this Act or rules made thereunder shall in relation to such matters and subject to such conditions if any as may be specified in the direction be exercisable also be such officer or authority subordinate to the Central Government or State Government as may be specified in the notification. Therefore, Section 39 is also relevant which is quoted as under:

Section 39 : Delegation of powers. - The appropriate Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act or rules made thereunder shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also,

(a) where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or by the State Government, or by such officer or authority subordinate to the State Government, as may be specified in the notification; and

(b) where the appropriate Government is a State Government, by such officer or authority subordinate to the State Government as may be specified in the notification.

27. The State Government has exercised the power conferred by Section 39 of the Industrial Disputes Act by issuing notification from Labour and Employment Department dated 21st April 1982 directs that the powers exercisable by appropriate Government under Sub-section 1 and Sub-section 4 of Section 33C of the Industrial Disputes Act shall also be exercisable by all the Labour Courts constitute either u/s 7 of the said Act or u/s 9 of the Bombay Industrial Relations Act, 1946 within their respective jurisdiction. Therefore, in view of aforesaid notification dated 21st April 1982, the Labour Court concerned was given power by State Government u/s 39 of the Act to have the jurisdiction to decide the recovery application which may be filed by workman u/s 33(C)(1) of the Industrial Disputes Act and also exercised the power u/s 33(C)(4) of the Industrial Disputes Act, 1947. Similarly, Labour and Employment Department had issued another notification dated 21st April 1982 while exercising the power conferred by the appropriate Government by Sub-section 2 of Section 33(C) of the Industrial Disputes Act, Hereby specified for the purpose of said Sub-section 2, all the Labour Courts constitute either u/s 7 or u/s 9 of the Bombay Industrial Relations Act, 1946 within their respective jurisdiction. The meaning of aforesaid notification where the power has been exercised by appropriate Government u/s 33(C)(2) which was given by statutory provision under the Industrial Disputes Act to the appropriate Government has been exercised and delegated to Labour

Courts. The notification issued u/s 39 delegating the powers by appropriate Government to Labour Court only for Section 33(C)(1) and for Section 33(C)(4) and for Section 33(C)(2), appropriate Government is having separate and independent power which has been delegated to the Labour Court by the appropriate Government. Therefore, the relevant both the notifications as discussed above are quoted as under:

Notification 1: Labour And Employment Department Notification Sachivalaya, Gandhinagar, 21st April 1982 Industrial Disputes Act, 1947.

No. KH-R-258/IDA-1082-11862(A)-(i) JH. - In exercise of the powers conferred by Section 39 of the Industrial Disputes Act, 1947 (XI of 1947), (hereinafter referred to as the said Act) and in supersession of Government Notification, Education and Labour Department, No. KH-SH-1080-IDA/1169/JH, dated 25th October, 1967, the Government of Gujarat hereby directs that the powers exercisable by it under Sub-sections (1) and (4) of Section 33-C of the said Act shall also be exercisable by all the Labour Courts constituted either u/s 7 of the said Act or u/s 9 of the Bombay Industrial Relations Act, 1946 within their respective jurisdiction.

By order and in the name of the Governor of Gujarat. J.M. Pandya,
Section Officer.

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Notification 2: Labour And Employment Department Notification Sachivalaya, Gandhinagar, 21st April 1982 Industrial Disputes Act, 1947.

No. KH-R-259/IDA-1082-11862(A)(Third)-JH. - In exercise of the powers conferred by Sub-section (2) of Section 33-C of the Industrial Disputes Act, 1947 (XIV of 1947)(hereinafter referred to as the said Act) and in supersession of Government Notification, Education and Labour Department, No. KH-SH-1061-IDA/1166/JH, dated the 25th October, 1967, the Government of Gujarat hereby specified for the purposes of the said Sub-section (2), all the Labour Courts constituted either u/s 7 of the said Act or u/s 9 of Bombay Industrial Relations Act, 1946 within their respective jurisdiction.

By order and in the name of the Governor of Gujarat. J.M. Pandya, Section Officer.

28. In view of this legal and statutory provisions r/w. Section 33(C)(1) and Section 33(C)(2) with Section 39, where, special provision is made for having direct remedy to the workman to file recovery application claiming the due amount from the employer. Therefore, contention raised by learned advocate Mr. Japee that claim of workman for leave encashment is covered by Schedule Third and Labour Court has no jurisdiction, cannot be accepted and this issue is not elaborately discussed in the reported decision of Apex Court in case of H.P. State Electricity Board and Anr. (supra) and power of appropriate Government u/s

33(C)(1) and u/s 33(C)(2) r/w. Delegation of power u/s 39 has not brought to the notice by respective parties to the Apex Court. But, such contention was not raised by petitioner before the Labour Court, not even raised in the present petition, therefore, also, it cannot be entertained and accepted by this Court and therefore, this contention is rejected.

29. The contention raised by learned advocate Mr. Japee that recovery application can be filed only before appropriate Government looking to the language u/s 33(C)(1) of the Industrial Disputes Act, 1947. The two notifications as referred above is a clear answer to his contention that now, from 1982 onwards, the power has been delegated to Labour Court by appropriate Government while exercising the power u/s 39 of the Industrial Disputes Act, 1947. The definition of wages is very clear which is quoted as under, where, except bonus and any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in course and amount of gratuity are not included in wages definition, but, accept that, all kind of allowances and service benefits including travelling concession and commission are covered by definition of wages given in Section 2(rr) of the Industrial Disputes Act, 1947, meaning thereby that, all kind of remuneration being covered in definition of wages which including a benefit of leave encashment, therefore, respondent has rightly claimed it as a part of backwages leave encashment and question of Schedule Third is not necessary to be considered, because, it is not applicable to recovery proceedings and it applied only to reference proceedings, where, dispute is referred by appropriate Government to the Labour Court. Therefore, according to my opinion, leave encashment is also covered by wages definition and for that, Labour Court has jurisdiction to decide it and for that, Labour Court has not committed any error which requires interference by this Court. Section 2(rr) is quoted as under:

"Wages" have been defined as per Section 2(rr) of the ID Act. Section 2(rr) of the ID Act, 1947 reads as under:

"Wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes-

- i. such allowances (including dearness allowance) as the workman is for the time being entitled to;
- ii. the value of any house accommodation, or of supply of light, water medical allowance, attendance or other amenity or of any service or of any concessional supply of food grains or other articles;
- iii. any travelling concession;
- iv. any commission payable on the promotion of sales or business or both

but does not include-

(a) any bonus;

(b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;

(c) any gratuity payable on the on the termination of his service;

30. Learned advocate Mr. Japee raised contention that Labour Court has committed error in granting interest amount upon due amount to the respondent. The Labour Court has passed an award on 15th June 1998. The copy of which was received by workman on 20th September 1999. Thereafter, on 6th October 1999, application was preferred before Labour Court under the Payment of Wages Act being No. 13 of 1999 which was dismissed only on the ground that recovery application u/s 33(C)(1) being alternative remedy available to the workman and therefore, application is filed under the provisions of the Payment of Wages Act cannot be entertained. Accordingly, that application was rejected on 11th September 2006 by the Payment of Wages Authority. Thereafter, a recovery application No. 80 of 2006 was filed by respondent workman on 16th October 2006. The Labour Court has granted 75% backwages for the period from 1st May 1983 to 16th September 1994. The date of award is 15th June 1998. The due and undisputed amount is not paid by employer without any valid justification for a period of 9 years and 4 months. Therefore, this much amount is utilized by employer or earned the interest, then, on the principles of restitution, Labour Court has rightly exercised equitable jurisdiction in granting interest in favour of respondent workman. The Labour Court has jurisdiction u/s 33C to decide, if any question arise as to the amount of money due or being an incidental power or ancillary power which give an equitable jurisdiction to Labour Court in case of unnecessary delayed in due payment without justification, then, Labour Court can grant interest upon such amount. The Labour Court is having wide power if satisfied that due and undisputed amount of the workman withheld by employer without justification, then, Labour Court has certainly power to grant interest upon due amount.

31. The provisions of Order XXI of the CPC is not applicable to the proceedings of Labour Court. The view taken by various High Courts and Apex Courts are quoted as under:

(1) In case of Union of India (UOI) and Another Vs. S.B. Agnihotri and Another,

4. Regarding the second plea about the award of interest at the rate of Rs. 18% of the Labour Court is concerned, it is clear from the record before this Court that the workman had been making representation after representation right from 1977 for making payment for working on Sundays and rest days; but the Railways did not take concrete steps for making payment and giving only evasive reply. This amount accrued to the workman on Sundays and rest days on which he worked. The Railways have withheld the payment unfairly. Equity demanded that the workman should have been paid interest for unlawfully withholding the

amount of the workman. In any case, as the award of interest is quite equitable and reasonable, I am not inclined to interfere under Article 226 of the Constitution of India.

5. As regards the third plea regarding the delay in making the application u/s 33-C(2) of the Act, no limitation has been prescribed by the statute for making such an application. In fact it is the Railways who are responsible for the delay, because in spite of the repeated representations made by the workman, they were not taking any concrete steps but only giving evasive reply. In the absence of any statutory provisions providing for a limitation for making an application u/s 33-C(2) of the Act, the application of the workman cannot be said to be time barred.

(2) In case of State of Haryana Vs. Hisam Singh and another,

5. The contention is wholly misconceived. In pursuance to the award dated August 27, 1990 the Management should have made the payment of back wages within a reasonable time. It took about seven months to reinstate the workman and thereafter almost five years were spent in paying the back wages. During this long interval the petitioner kept the money which was rightfully due to the respondent. No justification for such an inordinately long delay in payment has been even offered at the hearing of the case. In such a situation, we find that the Labour Court was amply justified in upholding the claim of the respondent-workman. If the technical plea raised on behalf of the petitioner is accepted, it would lead to a grave miscarriage of justice. It would allow the petitioner to take advantage of its own wrong. It would cause (un) avoidable hardship to the workman. Such is not the spirit of the industrial law. Thus, no ground for interference under Article 226 of the Constitution is made out.

(3) In case of Sri Himansu Sekhar Sharma Vs. Presiding Officer, Labour Court and Others,

4. No doubt in deciding an application u/s 33-C(2) of the Act the Labour Court is competent to decide only in respect of existing rights and claims which are capable of being computed in terms of money and that it functions as an executing Court to get the money from the employer to the workman, but it is by now far too well-settled in law that in exercising such functions the Labour Court has also the right to decide ancillary or incidental questions relating to existence of right and that for the purpose, it might hold an enquiry. The question was considered in The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., by a Constitution Bench wherein it was observed (p. 95):

...The claim u/s 33-C(2) clearly postulated that the determination of the question about computing the benefit in terms of money may, in some cases, have to be preceded by an enquiry into the existence of the right and such an enquiry must be held to be incidental to the main determination which has been assigned to the Labour Court by Sub-section (2)

Explaining the Court observed (p. 95):

...Before proceeding to compute the benefit in terms of money, the Labour Court inevitably has to deal with the question as to whether the workman has a right to receive that benefit. If the said right is not disputed, nothing more needs to be done and the Labour Court can proceed to compute the value of the benefit in terms of money; but if the said right is disputed, the Labour Court must deal with that question and decide whether the workman has the right to receive the benefit as alleged by him and it is only if the Labour Court answers this point in favour of the workman that the next question of making the necessary computation can arise....

This decision was followed with approval in 1972 I LLJ 235 R.B. Bansilal Arbichand Mills Co. Pvt. Ltd. v. The Labour Court which was in effect a Five Judges Bench decision though the judgment was delivered only by four Hon''ble Judges as the other Hon''ble Judge, Justice S.C. Roy had expired by the time the judgment was delivered but he had concurred to the judgment. In view of such pronouncements, the Labour Court was not correct to hold the case as not maintainable and rather it was its duty to have investigated the claim of the petitioner as to whether he was continuing as a workman during the relevant periods under the opp. party Nos. 2 and 3. That having not been done, we have to hold that the Labour Court has failed to exercise his jurisdiction properly in accordance with law.

5. The next question urged by Mr. Rath has also great substance. Admittedly the petitioner's employment under the opp. party No. 2 was in 1979. He came with the specific case that his employment was continuing throughout and attached the schedule of his dates of engagement to the application. Since the claim of his continuance in the engagement was denied and it was for the Labour Court to have investigated into the matter, it should have called upon the opposite parties to produce necessary papers to show that in fact that petitioner was not continuing in employment. Though the cases of the parties were to be confined to their pleadings, yet it is well-known that in proceedings before the Labour Court strict rules of pleading and evidence do not apply and that the Labour Court's discretion to arrive at the correct position of facts is not fettered by technical rules of evidence. It has to be remembered that the legislation in the Industrial Disputes Act was intended as a beneficial one to the workmen and that Labour Courts and Industrial Tribunals have been set up under the Act as special forums to adjudicate upon the disputes peculiar to the workmen so as to assure them not only a speedy and efficacious remedy but also a forum which would, if necessary, investigate into the disputed claims and determine the rights according to law as available to the workman. The Orissa Industrial Disputes Rules, 1959 (hereinafter referred to as 'the Rules') vest power in the Labour Court in Rule 25, in addition to the powers conferred by the Act, the powers of a Civil Court of discovery and inspection, granting adjournment, and reception of evidence on affidavit while trying a suit. Rule 24 inter alia vests powers in the

Labour Court to enter any building, factory, workshop or other place or premises whatsoever and inspect the same or any work, machinery, appliance or article therein or interrogate any person therein in respect of anything situated therein or any matter relevant to the subject-matter of the conciliation, investigation, enquiry or adjudication, and similar powers may also be exercised by any person authorized by the Labour Court after he has given reasonable notice. Vesting of such powers would show that one of the purposes of the Labour Court is to investigate or enquire into the claim made and make the adjudication which would include in itself doing all such things as are ancillary or incidental to the main question arising before it. As the petitioner was admittedly a workman, continuance in employment would be the normal rule and it would be for the employer to show discontinuance. Otherwise the petitioner would be called upon to discharge a negative onus. All the records would be available only with the opposite party Nos. 2 and 3 to show whether the petitioner was being continued in employment or not. As such, for a fair adjudication of the claim, the Labour Court was to have called upon the opp. party Nos. 2 and 3 to produce the records and find out whether the claim made by the petitioner was correct or was spurious. In AIR 1953 SC 1710 *Workmen of Joint Steamer Companies v. Joint Steamer Companies and Anr.* their Lordships observed:

...We think it proper however to emphasize the importance of both employers and workmen making available to industrial adjudication all relevant papers, including account books which are likely to assist a proper decision of the questions at issue". In 1975 II LLJ 373 (*P&H Ltd. v. R.S. Bhatia (dead) through L.Rs.*) where the dispute was whether the respondent before Court was a workman or not, with the management claiming that the respondent was observed that there was practically no evidence on behalf of the appellant management in support of its case that the respondent was not a workman and that no paper was produced by it to show any entrustment of managerial or administrative duty to the respondent while he was working as a mere Accountant. Though the case arose in a different context where the appellant had pleaded an admitted workman to be in reality engaged in a supervisory capacity and hence the Court found fault of their having not established such fact, yet the principle is deducible that where the management comes with the plea that the person who is admitted to be a workman is claimed to be no more continuing as such, it would be for them to establish since when and by what process the workman has not been engaged and whether there are materials to show that his engagement has ceased. It was also for the Labour Court to have called upon the opposite party Nos. 2 and 3 to produce the records to satisfy itself of such fact.

(4) In case of *Sayal Mal Bhansali v. Judge, Labour Courts Udaipur and Anr.* reported in 1995 I LLJ 914 Raj. High Court (Para 14)

14. After having carefully gone through the case law cited by the learned Counsel appearing for the parties and referred to above, I am of the opinion that in the

peculiar facts and circumstances of this case the learned Labour Court should have awarded the interest to the petitioner. The petitioner has been clamouring for the amount due to him since 1984. A notice (Annex. 1) on the record has not been controverted by the other side. The petitioner thereafter had to file a writ petition in this Court for appropriate direction to the Government to refer the dispute to the Tribunal. The petitioner once again invited the respondent No. 2 to make payment of the amount due vide Annex. 2 to make payment of the amount due vide Annex. 2 after the decision of the writ petition. The request was not accepted and nothing was paid. This averment also goes unrebutted. The respondent No. 2 should have under the circumstances immediately made an offer for the payment of the money, which according to him, was undisputed. For the first time a willingness was exhibited during the proceeding before the Labour Court that the amount covering bonus etc. was offered but was declined by the petitioner. Nothing has been brought to my notice from the side of the respondent No. 2 as to when and where the said offer was made. In para 10 of the petition it is stated that Shyam Singh, Manager of respondent No. 2 during his cross-examination on the affidavit stated that the respondent No. 2 was willing to pay the undisputed amount regarding claim of interest, it was left for the court to decide. It was in this situation the amount was paid and received in the court. The withholding of the undisputed amount on the part of the respondent No. 2 was unjustified. The petitioner, thus under these circumstances was entitled to claim interest and the learned Labour Court should have granted the interest to the petitioner.

(5) In case of Chennamangalam Nair Samajam Vs. Sarada,

19. The amounts due under various counts were quantified by the Labour Court and an award was passed. It is only future interest that is awarded and that too only if the amounts awarded were not paid within one month. This is not a case where the Labour Court was executing an award passed by the Industrial Tribunal or the Labour Court. In this case, recourse was taken to recover the amount due under the provisions of Section 33C(2) and in that context, award of future interest on the amounts due to the employee is equitable and reasonable and is only incidental to the reliefs claimed. In any event, I am not inclined to interfere with the award of interest in exercise of my powers under Article 227 of the Constitution of India.

32. It is settled law laid down by Apex Court in case of Grindlays Bank Limited v. Central Government Industrial Tribunal and Ors. reported in Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others, where, question was considered by Apex Court that there is no rule in Central Industrial Disputes which give power to Labour Court or Industrial Tribunal to set aside ex-parte award, therefore, ultimately, Apex Court has examined that issue that in absence of such statutory power, whether Labour Court or Industrial Tribunal has jurisdiction to set aside ex-parte award. The Apex Court has come to conclusion that even in absence of statutory rules, a Court have inherent power and

endowed such ancillary power to exercise doing justice between the parties. The relevant observations made by Apex Court in Head Note, therefore, is quoted as under:

Head Note: Held: It is true there is no express provision in the Act or rules giving the Tribunal jurisdiction to set aside the ex parte award. But it is a well-known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. There is no statutory prohibition. On the other hand, there are indications to the contrary.

The words "shall follow such procedure as the arbitrator or other authority may think fit", in Section 11(1), are of the widest amplitude and confer ample powers upon the Tribunal and other authorities to devise such procedure as the justice of the case demands.

Where a party is prevented from appearing at the hearing due to sufficient cause, and is faced with an ex parte award, it is as if the party is visited with an award without a notice of the proceedings. It is needless to stress that where the Tribunal proceeds to make an award without notice to a party, the award is nothing but a nullity. In such circumstances, the Tribunal has not only the power but also the duty to set aside the ex parte award and direct the matter to be heard afresh.

The language of Rule 22 unequivocally makes the jurisdiction of the Tribunal to render an ex parte award conditional upon the fulfillment of its requirements. The power to proceed ex parte under Rule 22 carries with it the power to enquire whether or not there was sufficient cause for the absence of a party at the hearing.

33. Therefore, in view of aforesaid decisions of various High Courts and Apex Court, Labour Court has inherent power having equitable jurisdiction to grant interest when employer has withheld due and undisputed amount of the workman without any justification to grant interest upon such amount. Therefore, Labour Court has not committed any error in granting the interest in favour of respondent workman.

34. Apart from that, but, approach of the petitioner is not in a good test, fight against the widow entitled the legal claim of backwages being an undisputed amount and therefore, according to my opinion, when Labour Court has not committed any error in passing such order and learned advocate Mr. Japee is not pointing out any infirmity in order because entire order is passed based on admission and without producing any evidence by the petitioner before the Labour Court, Labour Court has not committed any error while passing such order even not committed any error while granted interest in favour of workman

against the due amount where the delayed payment about 9 years and 4 months has been there.

35. Therefore, with respect to decision of Apex Court, though it is binding to this Court, relying upon by learned advocate Mr. Japee made a submission before this Court which was not made before the Labour Court and no such contention was raised in petition, even though, some extent, examining the legal issue, according to my humble opinion, is necessary, otherwise, if such contention may open to the employer, then, number of workers will suffer unnecessarily in legal fight and their legal claims or due claims become store, so long, such legal fight is clear by Apex Court, but, during that period, humble opinion is expressed by me though decision of Apex Court is binding to me and I am to follow the same, but, I am not accepting the submissions made by learned advocate Mr. Japee, because, he has not made this contention before the Labour Court not only that but such contention was not raised in the petition. Therefore, I am trying to deal with this contention only to that extent keeping in mind the decision of Apex Court which is binding to this Court. So, this Court may not be misunderstood for discussing the issue at large because it is in the interest of justice of all the workmen those who have filed such recovery application before the Labour Court.

36. Therefore, according to my opinion, Labour Court has rightly granted the amount. For that, no error is pointed out by learned advocate Mr. Japee. Therefore, no interference is required by this Court while exercising the power under Article 227 of the Constitution of India. There is no substance in the present petition. Accordingly, present petition is dismissed with cost. The cost is quantified Rs. 10,000/- to be paid by petitioner to widow respondent.

37. Ordinarily, in the petition filed by the employer, while confirming the order in question, this Court is not issuing any direction for implementation of the order in question, but, according to my opinion, this being a fit case where this Court can exercise the power under Article 226 of the Constitution of India to direct the Collector, Nadiad to recover the said amount as ordered by Labour Court on 4th December 2007 in Recovery Application No. 80 of 2006 from the petitioner while exercising the power under the Bombay Land Revenue Code immediately without any delay. Registry is directed to immediately issue writ of said order to the District Collector, Nadiad without any delay.

38. Accordingly, present petition is dismissed in limine.