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**(2017) 07 BOM CK 0016**  
**In the Bombay High Court**  
**Case No : 1783 of 2016**

Tularam s/o Adkuji Bhogare

APPELLANT

Vs

Maharashtra State Co-operative Tribal Development  
Corporation Limited (MSCTDC LTD), & Ors.

RESPONDENT

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**Date of Decision : 07-07-2017**

**Acts Referred:**

<a href=1824>Industrial Disputes Act, 1947</a>, <a href=1824-33C>Section 33C(2)</a> - Recovery of money due from an employer  
<a href=6323>Payment of Gratuity Act, 1972</a>, <a href=6323-14>Section 14</a>, <a href=6323-8>Section 8</a> - Act to o

**Citation : (2017) 07 BOM CK 0016**

**Hon'ble Judges : Indira Jain**

**Bench : SINGLE BENCH**

**Advocate : A.N. Vastani, P.D. Meghe**

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**Judgement**

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsel for parties.

2. The challenge in petition is to the common order dated 20.1.2016 passed by the Industrial Court, Bhandara in Revision Application (ULP) Nos.76/2015 and 77/2015 thereby setting aside the judgment and order passed by the Labour Court, Gondia in Miscellaneous Application (ULP) No.2/2014 directing non-applicants to pay Rs.6,79,305/- to applicant.

3. The facts giving rise to the petition may be stated in brief as under : (i) Petitioner was appointed as Grader with respondent no.1 and discharged his duties with respondent nos.2 and 3. He was promoted to the post of Senior Assistant in the year 2012. He retired from service on 30.4.2013 and thereby rendered his services for more than 34 years. On retirement, petitioner was entitled to receive retiral benefits. Respondent nos.2 and 3 sent proposal for sanction of retirement benefits to petitioner. Proposal was sanctioned and pension is paid to petitioner regularly. However, proposal for sanction of gratuity

and encashment of leave sent by respondent nos.2 and 3 to respondent no.1 though sanctioned, amount of gratuity and encashment of 295 days earned leave was not paid to petitioner. On the contrary, respondent no.1 issued a letter dated 28.11.2013 and directed recovery of Rs.6,17,833/- from the petitioner from the amount of gratuity and leave encashment payable to him.

(ii) Petitioner then moved an application under Section 50 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 and under Section 33-C (2) of the Industrial Disputes Act, 1947 before Labour Court, Gondia. Vide judgment and order dated 14.10.2015, Labour Court partly allowed the application under Section 33-C (2) of the Industrial Disputes Act and directed the respondents to pay Rs.6,79,305/- to petitioner within thirty days from the date of order. The court, however, declined to grant interest to applicant on the amount due.

(iii) Being dissatisfied with the order, Revision Application nos.76/2015 and 77/2015 came to be filed by respondents and petitioner respectively. The Industrial Court, Bhandara vide judgment and order dated 20.1.2016 allowed revision application preferred by respondents and rejected the revision filed by petitioner against the order declining interest. It is this order which is the subject matter of present writ petition.

4. Heard Shri Vastani, learned counsel for petitioner and Shri Meghe, learned counsel for respondents.

5. Shri Vastani, learned counsel for petitioner submitted that vide communication dated 28.11.2013, respondent no.1 admitted the entitlement of petitioner to gratuity of Rs.4,55,400/- as per Rule 84 of Corporation Employees Service Rules of respondent no.1 and encashment of earned leave to the tune of Rs.2,23,905/-. The submission is that despite admitting entitlement of petitioner, respondent no.1 abruptly directed recovery of Rs.6,17,833/- from the amount of gratuity and leave encashment. According to learned counsel, once the claim was admitted and there was no dispute regarding entitlement of petitioner, Labour Court had rightly directed the respondents to pay the legal dues to petitioner under Section 33-C (2) of the Industrial Disputes Act. It is submitted that the provisions of the Payment of Gratuity Act, 1972 would not be applicable in the factual matrix of the case in view of unequivocal admission of respondents regarding entitlement of gratuity and leave encashment to petitioner. The learned counsel submits that Industrial Court misread the judgment of the Hon'ble Supreme Court and wrongly held that application under Section 33-C (2) of the Industrial Disputes Act would not lie before the Labour Court in such a case. It is submitted that no dispute as regards quantum or entitlement of petitioner was ever raised and under Section 33-C (2) of the Industrial Disputes Act, Labour Court has jurisdiction to decide the application. In short, submission is that the controversy is not governed by the provisions of the Payment of Gratuity Act, but by Section 33-C (2) of the Industrial Disputes Act. In support of submissions, learned counsel for petitioner placed reliance on :

(i) Pettai Co-operative Milk Supply Society Limited .vs. Presiding Officer, Labour Court, Madurai and another. [1976 Lab.I.C. 278]

(ii) State of Punjab .vs. The Labour Court, Jullundur and others [AIR 1979 SC 1981]

(iii) Rajinder Kumar Nangia .vs. Rashtriya Chemicals & Fertilizers Limited [2002 (1) Mh.L.J. 518]

6. Per contra, Shri Meghe, learned counsel for respondents submitted that huge recovery of Rs.6,79,305/- is to be made from petitioner and vide communication dated 28.11.2013, respondent no.1 ordered to adjust the dues from gratuity and leave encashment amount. The learned counsel submits that under Section 8 of the Payment of Gratuity Act, 1972, petitioner was required to approach the controlling authority and Labour Court has no jurisdiction under Section 33-C (2) in such a case. The submission is that the order of Labour Court is without jurisdiction and error committed was rightly rectified by the Industrial Court. On the object and scope of Section 33-C (2) of the Industrial Disputes Act, learned counsel for respondents relied upon :

(i) Central Inland Water Transport Corporation Limited .vs. The Workmen and another [1974 Lab.I.C.1018]

(ii) State of Punjab .vs. The Labour Court, Jullundur and others [AIR 1979 SC 1981]

(iii) P.K. Singh and others .vs. Presiding Officer and others [(1988) 3 SCC 457]

(iv) Municipal Corporation of Delhi .vs. Ganesh Razak and another [1994 AIR SCW 5000]

(v) Municipal Council, Bhandara through its Chief Officer .vs. Vimal widow of Sadaram Kodape [ 2014 II CLR 57].

7. Based on the above referred judgments, submission on behalf of respondents is that provisions of the Payment of Gratuity Act, 1972 would be applicable, as respondent no.1 has ordered recovery of dues and its adjustment against the entitlement of petitioner towards gratuity and leave encashment. It is further submitted that proceedings under Section 33-C (2) of the Act are in the nature of execution proceedings which envisages a prior adjudication or recognition by the employer of the claim of workman to be paid to him and if the same is disputed, remedy under Section 33-C (2) of the Act is not available to the workman. Learned counsel contended that in the present case there was no earlier adjudication and entitlement being disputed proceedings under Section 33-C (2) of the Act were not maintainable.

8. With the assistance of the learned counsel for the parties, this court has gone through the impugned judgment and order passed by the Industrial Court. The moot question is, whether proceedings under Section 33-C(2) of the Industrial Disputes Act, 1947 were maintainable before the Labour Court. For ready

reference, Section 33-C (2) of the Act is reproduced here as under :

33-C. Recovery of money due from an employer :

(1) .....

(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.]

9. On the careful reading of the provisions of Section 33-C (2) of the Act and the well settled principles of law laid down by the Hon"ble Supreme Court in the judgments relied upon by the learned counsel for parties, it is apparent that proceedings under Section 33-C (2) of the Act are in the nature of executing proceedings. Since the proceedings are analogues to the execution proceedings, the same does not extend to the determination of disputes of entitlement if there is no prior adjudication or recognition of the same by the employee.

10. In the cases before the Hon"ble Supreme Court relied upon by the learned counsel for respondents, employers had disputed the entitlement and claim of the workmen.

11. In the case on hand facts are distinguishable. Respondent no.1 issued order dated 28.11.2013. From this order, it is apparent that an amount of Rs.4,55,400/- was sanctioned to petitioner towards gratuity and Rs.2,23,905/- towards encashment of 295 days earned leave. The entitlement towards gratuity and encashment of leave is not disputed by respondents anywhere either in the order or in communication or in written statement filed before the Labour Court.

12. The contention raised by respondents is that amount of Rs.6,17,833/- pertaining to years 2002-2010 is recoverable from petitioner and this amount has to be adjusted from the amount of gratuity and leave encashment sanctioned to petitioner. This is not permissible. Once respondents admit entitlement of petitioner to the claim towards gratuity, provisions of Section 33-C(2) of the Industrial Disputes Act would be attracted and submission of respondents that provisions of the Payment of Gratuity Act are applicable is misconceived.

13. It is significant to note that Industrial Court has relied upon the judgment of the Hon"ble Supreme Court in the State of Punjab .vs. The Labour Court, Jullundur and others, [AIR 1979 SC 1981] and came to the conclusion that in

view of Section 8 of the Payment of Gratuity Act, application ought to have been moved before the Controlling Authority and Labour Court had no jurisdiction to deal with the controversy regarding the claim of gratuity.

14. In this case before the Hon"ble Supreme Court, respondents nos.2 to 8 were employed as work-charged employees. On completion of the work assigned to them, they were retrenched and retrenchment compensation was paid to them. Employees claimed that they were also entitled to gratuity, bonus, certain other allowances and benefits. The claim was disputed by the employer and submission was that employees were not entitled to gratuity under the Payment of Gratuity Act, 1972. In view of the dispute raised, the Hon"ble Apex Court held that applications under Section 33-C (2) of the Industrial Disputes Act do not lie.

15. As indicated above, in the present case, there is no dispute regarding entitlement of petitioner to the claim of gratuity. On the contrary, there is unequivocal admission in the order dated 28.11.2013 itself that petitioner is entitled to gratuity and encashment of leave. Since there is no denial by respondents to entitlement of petitioner to gratuity, this court is of the view that jurisdiction of Labour Court under Section 33-C (2) of the Act is not excluded by the provisions of Section 14 of the Payment of Gratuity Act, 1972. So far as jurisdiction of Controlling Authority under the Payment of Gratuity Act is concerned, in case of dispute to the entitlement, Controlling Authority is vested with the jurisdiction to decide the same. Where there is no dispute to entitlement and even to the computation, as in the present case, jurisdiction of Labour Court under Section 33-C (2) of the Industrial Disputes Act cannot be said to be in conflict with any of the provisions of the Payment of Gratuity Act. Needless to state that Section 33-C (2) of the Act is of general character and its wider application is not excluded by Section 14 of the Payment of Gratuity Act.

16. So far as interest claimed by petitioner on the amount due is concerned, Labour Court has assigned the convincing reasons and declined payment of interest. Revisional Court has dismissed Revision Application No.77/2015 preferred by petitioner against the order of Labour Court refusing to grant interest.

17. In the above premise and in view of the concurrent findings on interest recorded by the courts below, this court is not inclined to interfere with the same in writ jurisdiction. However, regarding entitlement of petitioner to receive gratuity and payment towards encashment of leave, this court finds that the view taken by Industrial Court is erroneous and unsustainable in law. Interference is thus warranted in writ jurisdiction. Hence, the following order : O R D E R

(i) Writ Petition No.1783/2016 is partly allowed.

(ii) Rule is made absolute in terms of prayer clauses (ii) & (iii).

(iii) No costs.