

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 223 of 2018
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R/SPECIAL CIVIL APPLICATION NO. 224 of 2018
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R/SPECIAL CIVIL APPLICATION NO. 239 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 240 of 2018

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SANSKRUIT EDUCATION SOCIETY, & 2 other(s)
Versus
PRAVINBHAI AMBALAL VASAVA

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Appearance:

MR KISHANKUMAR R MAURYA FOR MR D K PUJ (3836) for the
Petitioner(s) No. 1,2,3
MR SUBRAMANIAM IYER(2104) for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA

Date : 10/03/2022
COMMON ORAL ORDER

1. **RULE.** Learned advocate Mr.Subramaniam Iyer waives service of notice of rule for and on behalf of the respondent-workmen.

2. Since the short issue is involved in the present group of writ petitions, the same are heard and decided analogously by this common order.

3. The present writ petitions have been filed for quashing and setting aside the orders passed by the Labour Court, Vadodara in recovery applications filed by the respondent-employees. The respondent-employees are drivers and conductors.

4. Since the orders are similar in nature, but of different dates, the facts are incorporated from the writ petition being Special Civil Application No.223 of 2018.

4.1 The petitioner No.1 is a Trust and petitioner No.2 is the Principal of Delhi Public School (DPS) run by the petitioner No.1-Trust and the petitioner No.3 is a contractor, rendering services to the petitioner Nos.1 and 2.

4.2 The respondent-workman was appointed by the petitioner-School and the petitioner No.3 was marking his presence in the Register maintained by the petitioner-School. It is the case of the

respondent-employee that at the time of appointment, the respondent-workman was paid monthly salary of Rs.750/-, which is less than minimum wages as per the Minimum Wages Act, 1948. It was alleged that the petitioner No.3 was taking services of driver/ conductor, but was not being paid minimum wages from 23.01.2003. The respondent-workman therefore, prayed for payment of the differential amount from the date of his appointment till 31.05.2011 along with interest at the rate of 18%. Along with the said application, the details of his working hours, basic salary, dearness allowance etc. and detailed calculation of claim was annexed.

4.3 By the impugned order dated 17.01.2016, passed in Recovery application filed under the provision of Section 33C(2) of the Industrial Disputes Act, 1947 (I.D. Act), the Labour Court, Vadodara awarded an amount of Rs.1,29,034.30/- as differential amount of wages. Thereafter, the respondent-employee filed an application under Section 33C(1) of the I.D. Act for issuance of recovery certificate, which was allowed vide order dated 26.10.2017.

SUBMISSIONS

5. Learned advocate Mr.Maurya appearing for the petitioners at the outset, has submitted that the Labour Court has no jurisdiction to entertain the

application filed under Section 33C(2) of the I.D. Act, when the claim itself is disputed. He has submitted that the respondent-workman has filed the application against the petitioners under the provision of Section 33C(2) of the I.D. Act claiming wages. It is submitted that in fact the petitioner No.3 is a contractor rendering service to the petitioner Nos.1 and 2. The respondent-workman was appointed by the petitioner No.2-School and petitioner No.3 was marking his presence in the Register maintained by the petitioner-School and at that point of time, the respondent-workman was being paid monthly salary of Rs.750/-.

5.1 Learned advocate has further submitted that on notice being served, the petitioner No.2 filed a reply at Exh.11 and also produced certain documents with a separate list. Similarly, a reply was filed by the petitioner No.3 and a specific contention was raised before the Labour Court that the petitioner-School had given a contract to M/s.EssPee Corporation and the respondent-workman joined the said contractor after March, 2004 and when the contract of M/s.EssPee Corporation came to an end, the drivers and conductors working with the said contractor have left their services. It is submitted by him that the respondent-workman thereafter, joined Anmol Education Service and the said contract was continued till May, 2005

and liability to pay him the minimum wages lies with Anmol Education Service and not with the petitioner. It is further submitted that from June, 2005, the contract entered into between petitioner Nos.2 and 3, under which the petitioner No.3 was providing service of the drivers and conductors to the petitioner Nos. 1 and 2 and they had paid minimum wages till 31.05.2011 and their provident fund was also deducted.

5.2 It is thus, submitted by the learned advocate Mr.Maurya that in view of the aforesaid dispute, the Labour Court could not have passed the award granting differential amount of minimum wages without even joining the contractors in the proceedings. Thus, he has submitted that the proceedings under the provisions of Section 33C(2) of the I.D. Act are in the form of execution proceedings and, therefore, the application claiming the amount under the said provision is not maintainable without prior adjudication. It is submitted that the dispute should have been first examined by the competent authority under the Minimum Wages Act or by the Labour Court in reference proceedings under section 10 of the Act.

5.3 In support of his submissions, he has placed reliance on the judgements of the Apex Court in the cases of State of Uttar Pradesh and Anr. Vs.

Brijpal Singh, (2005) 8 S.C.C. 58, Punjab Beverages Pvt. Ltd., Chandigarh and Ors. Vs. Suresh Chand and Ors., (1978) 2 S.C.C. 144, Municipal Corporation of Delhi Vs. Ganesh Razak and Anr., (1995) 1 S.C.C. 235, State Bank of India Vs. Ram Chandra Dubey and Ors., (2001) 1 S.C.C. 73 and U.P. State Road Transport Corporation Vs. Birendra A Bhandari, (2006) 10 S.C.C. 211. Thus, he has submitted that the writ petitions may be allowed.

6. Per contra, learned advocate Mr. Iyer has submitted that the writ petitions are not required to be entertained since the respondent-workman, who is working under the petitioners, is entitled to the wages as per the Minimum Wages Act, which is not paid by him. It is submitted that the Labour Court, after considering the documentary evidence, has passed the order directing the payment of differential amount to the respondent-workman and hence, recovery application has been precisely decided by the Labour Court, which may not be disturbed.

6.1 In support of his submissions, he has placed reliance on the judgement of the Apex Court in the case of Manganese Ore India Ltd. Vs. Chandi Lal Saha, AIR 1991 SC 520. Thus, he has submitted that the present writ petitions may be rejected.

CONCLUSION

7. Heard the learned advocates for the respective parties and also perused the documents as pointed out by them.

8. The issue raised in the present group of writ petitions is whether the Labour Court has jurisdiction to entertain the application filed under the provision of Section 33C(2) of the I.D. Act or not and order the grant of the differential amount of the wages claimed by the respondent-workmen in wake of the fact that they have been engaged by different contractors for different period.

9. As the facts will suggest and it is not in dispute that initially the petitioner No.3 was engaged by the petitioner-School and the contract of their service was given to M/s.EssPee Corporation and the respondent-workmen had joined the said corporation. Thereafter, from March, 2004, the contract with M/s.EssPee Corporation came to end and the respondent-workmen, who were drivers and conductors respectively, have joined Anmol Education Service and the said contract continued till May, 2005. In June, 2005, when the said contract was over, the same was entered between the petitioner Nos.2 and 3, under which the petitioner No.3 was providing service of the drivers and conductors to the petitioner Nos.1 and 2. It is the case of the petitioner Nos.2 and

3 that they had paid minimum wages till 31.05.2011 and provident fund was also deducted.

10. From the proceedings, it appears that the petitioners had left M/s.EssPee Corporation and had also withdrawn the provident fund contribution. Thus, the petitioners have disputed that amount of wages and also the liability of paying the minimum wages. There are different contractors and the period of engagement of the respondent-workmen is also different. It is also not in dispute that the respondents in fact had withdrawn the provident fund amount from one contractor and thereafter, have joined another contractor. The Labour Court, in view of such disputed question, could not have given findings with regard to grant of differential amount of minimum wages under Section 33C(2) of the I.D. Act.

11. Section 33C(2) of the I.D. Act reads as under:

*"[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 5A or chapter 5B, 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 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 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 application 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."

12. It would be apposite to refer to the decision of the Supreme Court in the case of **State of Brijpal Singh** (supra), the Supreme Court, after survey of various decisions on the interpretation of the provisions of Section 33C of the I.D. Act, has held thus:-

"10. It is well settled that the workman can proceed u/s. 33C(2) only after the Tribunal has adjudicated on a complaint u/s. 33A or on a reference u/s. 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 Put. Ltd. V/s. Suresh Chand, 1978 2 SCC 144 held that a proceeding u/s. 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 u/s. 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 u/s. 10 of the Act."

11. In the case of *Municipal Corporation of Delhi V/s. Ganesh Razek & Anr.*, 1995 1 SCC 235, this Court held as under:-

"12. The High Court has referred to some of these decisions but missed the true import thereof. The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding u/s. 33-C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compare the benefit so adjudicated on that basis in exercise of its power u/s. 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity required interpretation that the interpretation is treated as incidental to the Labour Court's power u/s. 33-C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution."

13. In these matters, the claim of the respondent-workmen who were all daily-rated/casual workers, to be paid wages at the same rate as the regular workers, had not been earlier settled by adjudication or recognition by the employer without which the stage for computation of that benefit could not reach. The workmen's claim of doing the same kind of work and their entitlement to be paid wages at the same rate as the regular workmen on the principle of "equal pay for equal work" being disputed, without an adjudication of their dispute resulting in acceptance of their claim to this effect, there could be no occasion for computation of the benefit on that basis to attract Sec. 33- C(2). The mere fact that some other workmen are

alleged to have made a similar claim by filing writ petitions under Art. 32 of the Constitution is indicative of the need for adjudication of the claim of entitlement to the benefit before computation of such a benefit could be sought. Respondents claim is not based on a prior adjudication made in the writ petition filed by some other workmen upholding a similar claim which could be relied on as an adjudication enduring to the benefit of these respondents as well. The writ petitions by some other workmen to which some reference was casually made, particulars of which are not available in these matters, have, therefore, no relevance for the present purpose. It must, therefore, be held that the Labour Court as well as the High Court were in error in treating as maintainable the applications made u/s. 33-C(2) of the Act by these respondents."

12. In the case of *State Bank of India V/s. Ram Chandra Dubey & Ors.*, 2001 1 SCC 73, this Court held as under :-

"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 workmen.

(8) The principles enunciated in the decisions 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 preexisting 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 quasijudicial 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".

13. Thus it is clear from the principle enunciated in the above decisions that the appropriate forum where question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made. Thereafter, the Labour Court, in the instant case, cannot arrogate to itself the functions of an Industrial Tribunal and entertain the claim made by the respondent herein 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 I.D. Act. Therefore, the Labour Court has no jurisdiction to adjudicate the claim made by the respondent herein under Section 33C(2) of the I.D. Act in an undetermined claim and until such adjudication is made by the appropriate forum, the respondent-workman cannot ask the Labour Court in an application under Section 33C(2) of the I.D. Act to disregard his dismissal as wrongful and on that basis to compute his wages. It is, therefore, impossible for us to accept the arguments of Mrs. Shymala Pappu that the respondent-workman can file application under Section 33C(2) for determination and payment of wages on the basis that he continues to be in service pursuant to the said order passed by the High Court in Writ Petition No. 15172

of 1987 dated 28.10.1987. The argument by the learned counsel for the workman has no force and is unacceptable. The Labour Court, in our opinion, has erred in allowing the application filed under Section 33C(2) of the I.D. Act and ordering payment of not only the salary but also bonus to the workman although he has not attended the office of the appellants after the stay order obtained by him. The Labour Court has committed a manifest error of law in passing the order in question which was rightly impugned before the High Court and erroneously dismissed by the High Court. The High Court has also equally committed a manifest error in not considering the scope of Section 33C(2) of the I.D. Act. We, therefore, have no hesitation in setting aside the order passed by the Labour Court in Misc. Case No. 11 of 1993 dated 23.8.1995 and the order dated 9.1.2002 passed by the High Court in C.M.W.P. No. 36406 of 1995 as illegal and uncalled for. We do so accordingly."

13. The Supreme Court in the case of **Birendra A Bhandari** (supra), while examining claim for payment of arrears relating to differentiation of salary, D.A. arising out of recommendation of 5th Pay Commission, has held thus:-

"7. The benefit which can be enforced under Section 33 C(2) is a pre-existing benefit or one flowing from a preexisting right.

8. In the case of *State Bank of India v. Ram Chandra Dubey & Ors.*, [2001] 1 SCC 73, this Court held as under:

"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 under Section 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 workmen.

8. The principles enunciated in the decisions 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 under Section 33 C(2) of the Act. The benefit sought to be enforced under Section 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 under Section 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 quasijudicial 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 under Section 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."

9. The position was re-iterated by a three-Judge Bench of this Court in State of U.P. and Anr. v. Brijpal Singh, [2005] 8 SCC 58.

10. *Judged in the background of principles set out above, the orders passed by the Labour Court and the High Court are indefensible and are accordingly set aside."*

14. The Supreme Court in the aforementioned judgments has held that the benefits under the provision of Section 33C(2) of the I.D. Act can be enforced, on a pre-existing right. It is also held that the Labour Court has no jurisdiction to adjudicate the claim made under Section 33C(2) of the I.D. Act in an undetermined claim and until such adjudication is made by the appropriate forum, the respondent-workmen cannot ask the Labour Court in an application under Section 33C(2) of the I.D. Act. It is held that the workmen can proceed under Section 33C(2) of the I.D. Act only after the Tribunal has adjudicated on a complaint under section 33A or on a reference under section 10 of the I.D. Act.

15. The Supreme Court in the case of ***Punjab Beverage Pvt. Limited*** (supra), has held that a proceeding under section 33C(2) of the I.D. Act 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 and such 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.

16. In the present case, as noted hereinabove, there is dispute with regard to the liability of payment of minimum wages as there are various contractors, under which the respondent-workmen have served. Petitioner No.2 had contended that no amount is due and payable. The fact also reveals that the respondent-workmen were also engaged by one Anmol Education Service till October, 2005. The Labour Court has very cursorily passed the order conferring the liability on all the petitioners, without discussing the contract period. Thus, without prior adjudication on the aforesaid facts, the Labour Court had no jurisdiction to pass an order under Section 33C(2) of the I.D. Act. Reliance placed on the judgement of Apex Court in the case of **Chandi Lal Saha** (supra) will not rescue the respondent-workmen since, in the case before the Apex Court, the parties had admitted the fixation of minimum rates and there was no dispute with regard to the period and liability of payment minimum wages.

17. Thus, the captioned writ petitions succeed. The impugned orders, in each of the writ petitions, are hereby quashed and set aside. However, it is clarified that it will be open for the respondent-workmen to approach appropriate

forum by filing appropriate application(s) claiming differential amount of the wages. Rule made absolute.

18. Registry to place a copy of this order in each of the connected matters.

Sd/-
(A. S. SUPEHIA, J)

NVMEWADA

