



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 5TH DAY OF APRIL, 2024

BEFORE

THE HON'BLE MR JUSTICE SHIVASHANKAR AMARANNAVAR

WRIT PETITION NO. 107562 OF 2014 (L-KSRTC)

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BETWEEN:

THE MANAGEMENT OF NWKRTC,
GADAG DIVISION,
R/BY ITS DIVISIONAL CONTROLLER,
GADAG, R/BY ITS CHIEF LAW OFFICER,
NWKRTC CENTRAL OFFICE, HUBLI.

... PETITIONER

(BY SMT. VEENA HEGDE, ADVOCATE)

AND:

MANJUNATH S/O NEELAKANTHAPPA BHOVER,



... RESPONDENT

(BY SRI. RAVI HEGDE, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI THERE BY QUASHING THE ORDER DATED 21/05/2013 PASSED BY THE LEARNED LABOUR COURT HUBLI IN APPLICATION NO.25/2012 THE COPY OF THE SAME IS PRODUCED AND MARKED AS ANNEXURE-C TO THE WRIT PETITION AND CONSEQUENTLY BE PLEASED TO DISMISS THE APPLICATION NO.25/2012 FILED BY THE RESPONDENT ON THE FILE OF PRESIDING OFFICER LABOUR COURT HUBLI IN THE INTEREST OF JUSTICE AND EQUITY.

THIS PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:





ORDER

The petitioner-Corporation is assailing the order in Application No.25/2012 dated 21.05.2013 on the file of the Presiding Officer, Labour Court, Hubli.

2. The petitioner hereinafter referred to as the 'Corporation' and the respondent as the 'workman'.

3. Brief facts of the case are that the workman was working as a driver under the Corporation and he was dismissed from service on 20.11.2006 for the proved misconduct. After a lapse of six years, from the date of dismissal order, the workman filed an application under Section 33C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'ID Act', for short) seeking a direction to the Corporation to pay an amount of Rs.6,11,103/- with interest at the rate of 18% per annum from the date of dismissal i.e. 20.11.2006 to 31.08.2012 on the basis of his last drawn salary. The labour Court by the impugned order allowed the application and directed the Corporation to pay a sum of Rs.6,11,103/- as wages from 20.11.2006 to 31.08.2012 with interest at the rate of 6%



per annum from the date of order till the date of payment. Aggrieved by the same, the present petition is filed by the Corporation.

4. Heard Smt. Veena Hegde, learned counsel for the Corporation and the Sri. Ravi Hegde, learned counsel for the respondent-Workman.

5. Learned counsel for the Corporation would contend that the application under Section 33C(2) of the ID Act seeking wages from the date of dismissal with interest at the rate of 18% per annum is not maintainable, as the proceedings under Section 33C(2) of ID Act are in the nature of execution proceedings, which envisage prior adjudication or recognition of the claim of the workman by the employer and the wages has to be paid at the rate which they claim computation and when the basis of their claim is disputed, the remedy under Section 33C(2) of ID Act is not available to the workman. It is further contended that, if there is any violation of Section 33(2)(b) of ID Act, the workman is at liberty to file necessary application under



Section 33A of ID Act and the claim petition filed by the workman under Section 33C(2) of the ID Act is not maintainable, as the order of dismissal existed as on the date of filing of an application under Section 33C(2) of ID Act. It is further contended that Section 33-C(2) of ID Act is applicable only where an amount has already been determined by a competent Court or any other authority, whereas in the present case, the amount sought by the workman has not been determined by any Court of law. In support of her contentions, the learned counsel has placed reliance on the decision of the Hon'ble Apex Court in the case of ***State of Uttar Pradesh and another v. Brijpal Singh***¹.

6. Per contra, learned counsel for the Corporation would justify the order passed by the labour Court and would contend that the order of dismissal from service is *non-est* as on the date of passing of the order in N/o.148/2005, which was pending, and the petitioner had not taken any approval of the order of dismissal under Section 33(2)(b) of ID Act and as such, an application

¹ (2005) 8 Supreme Court Cases 58



under Section 33C(2) of ID Act is applicable. Learned counsel further contended that the workman has filed an application seeking wages from the date of his dismissal on the ground that since the order of dismissal from service is a non-est for violation of Section 33(2)(b) of ID Act, as there is no order of dismissal against the workman and is deemed to be in service and as such he is entitled for wages from the date of dismissal and the application has been rightly entertained by the labour Court. The learned counsel placed reliance on the decision of the Co-ordinate Bench of this Court rendered in ***Writ Petition No.14466/2010 between Bangalore Metropolitan Transport Corporation, v. R.Rajendran*** whereunder the Co-ordinate Bench considering similar case, the application of the workman came to be allowed by setting aside the order passed by the labour Court. In support of his contention, he relied upon 5 Judge Bench decision in ***Jaipur Zilla Sahakari Bhoomi Vikas Bank Ltd. V. Ram Gopal Sharma and Others***².

² (2002) 2 SCC 244



7. Having heard the learned counsel for the Corporation and the learned counsel for the workman, the point that arises for consideration is:

"Whether the respondent-workman can file an application under Section 33C(2) of the Industrial Disputes Act in the absence of any challenge of the order of dismissal or in the absence of an application filed by the Corporation seeking approval of the order of dismissal under Section 33(2)(b) of ID Act?"

8. The undisputed facts are that, the workman has been dismissed from service for the proved misconduct on 20.11.2006. The contention of the respondent-workman is that the order of dismissal dated 20.11.2006 was not approved in terms of Section 33(2)(b) of ID Act. Therefore, the order of dismissal is non-est in the eye of law and consequently, the respondent-workman has filed an application under Section 33C(2) of ID Act to compute that the workman is entitled to receive a sum of Rs.6,11,103/- from 20.11.2006 till 31.08.2012 as arrears of wages.

9. At this stage, is it necessary to examine Section 33C(2) of the Industrial Disputes Act in deciding whether the workman's application is maintainable or not?



10. As on the date of the filing of the application under Section 33C(2) of ID Act there was no relationship of employer and employee between the parties and Section 33C(2) of ID Act reads as follows:

“33C. Recovery of money due from an employer.— (1) X X X

(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.”

11. A perusal of Section 33C(2) of ID makes it evident that, there should be a relationship of employee and employer and in the absence of challenge to the order of dismissal dated 20.11.2006 before appropriate forum, the application filed under Section 33C(2) of ID Act would not



be maintainable. The ingredients of Section 33C(2) of ID Act clearly envisages that, it is in the nature of execution proceeding and the same envisages a prior adjudication or recognition by an employer of the claim of the workman to be paid wages at the rate which they claim. The Co-ordinate Bench of this Court in the case of ***Karnataka State Road Transport Corporation v. C.V. Venkataramana*** disposed off on 16.04.2021, has held that the labour Court was not justified in entertaining the application filed by the workman under Section 33C(2) of ID Act on the ground that the Management had not filed any application seeking approval under Section 33(2)(b) of ID Act since the workman was dismissed from service and the same was not challenged by the workman in accordance with law. The said decision of the learned Single Judge has been affirmed by the Division Bench in Writ Appeal No.541/2021 wherein it is held as under:

6. *"We have considered the submissions made on both sides and have perused the record. The scope and ambit of Section 33C(2) of the Act is well defined by catena of decisions. The Supreme Court in **MUNICIPAL CORPORATION OF DELHI***



Vs. GANESH RAZAK AND ANOTHER has held that a workman can proceed under Section 33C(2) of the Act only after the Tribunal has adjudicated a complaint under Section 33(A) of the Act or on a reference under Section 10 of the Act that the order of discharge or dismissal was not justified and has set aside the order and has reinstated the workman. It has further been held that the nature of proceeding under Section 33C(2) of the Act is in the nature of an executive proceeding which presupposes adjudication of the liability in respect of a right which has to be enforced. Similar view has been taken by the Supreme Court in **CENTRAL INLAND WATER TRANSPORT CORPORATION LIMITED Vs. WORKMEN AND ANOTHER.**

7. In the instant case, admittedly there is no adjudication in respect of the order of dismissal, that the same has been passed in violation of Section 33(2)(b) of the Act. Similarly, it is also not in dispute that the claim made by the appellant in respect of his wages for a period from 08.03.2008 till 22.03.2014, there has been no adjudication. The Corporation has disputed the entitlement of the appellant to claim wages for the aforesaid period by filing statement of objections. Therefore, in the absence of any adjudication of the right of the appellant to recover the amount in question from the Corporation, the Labour Court could not have adjudicated the liability in a proceeding under Section 33C(2) of the Act and



could not have passed the impugned order.

8. *Sofar as reference made by the learned counsel for the appellant on the decisions relied upon by him is concerned, the same are an authority for a proposition that in case an order of dismissal is passed in violation of Section 33(2)(b) of the Act, the same is void. However, it is trite law that even a void order is required to be challenged, otherwise it binds the parties.*

The learned Single Judge has therefore rightly quashed the order passed by the Labour Court dated 24.11.2015.”

The Co-ordinate Bench of this Court in the case of ***The Chief Security & Vigilance Officer BMTC, Bengaluru v. M. Venkataswamy Reddy*** in ***Writ Petition No.4344/2018*** decided on ***14.07.2023***, after considering the judgments of the Hon'ble Apex Court in the case of ***Central Inland Water Transport Corporation Ltd. v. The Workmen & another***³ and in ***Municipal Corporation of Delhi v. Ganesh Razak and another***⁴ has held that the application filed under Section 33C(2) of ID Act is not maintainable, as there is no adjudication of right

³ 1974 (4) SCC 696

⁴ (1995) 1 SCC 235



of the petitioner's claim and mere non approval in terms of Section 33(2)(b) of ID Act does not give right to the workman to file an application under Section 33C(2) of ID Act. It is well settled that the workman can proceed under Section 33C(2) of ID Act only after the Tribunal has adjudicated on a complaint under Section 33A of ID Act or on a reference under Section 10 that the order of discharge or dismissal was not justified and has set aside the order and reinstated the workman, as held by the Apex Court in **Ganesh Razak's** case (supra) and that the proceedings under Section 33C(2) of ID Act is a proceeding in the nature of executing proceedings. The judgment relied upon by the learned counsel for the workman in the case of **Jaipur Zilla Sahakari Bhoomi Vikas Bank Ltd.** is not applicable to the present case on hand since the judgments referred do not relate to filing of application under sub-section (2) of Section 33C of ID Act.

12. The Labour Court not only awarded wages but also awarded interest on delayed payment of wages. The Co-Ordinate Bench of this Court in the case of **The**



Management of NWKRTC Dharwad Division Vs. Shri Shankrayya S/o Mallayya Virkthamath⁵ has considered the award of interest on delayed payment in claim made under Section 33-C(2) of the I.D.Act and has observed as under:

14. *The right to claim interest can be said to be a pre-existing right or benefit, provided the terms and conditions of contract of the employment between the employer and employee is determined in the contract of employment, or if it is determined in the Resolutions governing service conditions. Admittedly, the terms and conditions of contract of employment between the employer and employee if any, are silent on payment of interest on delayed service benefits. The Rules and Regulations governing the service conditions between the employer and employees also do not contemplate the payment of interest in case of delay in paying the interest to the employees.*

15. *This being the position, this Court is of the view that the claim for interest cannot be termed as a claim based on the pre-existing right or benefit within the meaning of Section 33-C(2) of the I.D. Act, 1947.*

16. *It is also an admitted fact that there is no adjudication by the competent authority or Industrial Tribunal as to whether the employees are entitled to interest on account of delayed payment. In addition to that, there is no adjudication as to the rate of interest as well. The rate of interest on account of delayed payment depends on various factors. It is submitted by the learned counsel for the petitioner-Corporation that payment was delayed on account of Covid-19 pandemic related restrictions.*

⁵ In W.P. No.104870/2023 C/w other matters decided on 15.12.2023



13. Accordingly, the application filed under Section 33C(2) of ID Act is not maintainable before the Labour Court and hence, the point framed for consideration is answered accordingly.

14. The learned counsel for the workman submits that the proceedings are now pending before the learned Additional District and Sessions Judge challenging the dismissal of the respondent and he will work out his remedy in the said proceedings.

15. For the aforesaid reasons, the Court proceeds to pass the following order:

The writ petition is allowed. The impugned order passed in Application No.25/2012 dated 21/05/2013 by the Presiding Officer, Labour Court, Hubli, is hereby set aside.

Sd/-
JUDGE

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ct:bck