IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
M.R. SHAH; B.V. NAGARATHNA, JJ.
CIVIL APPEAL NO.813 OF 2022; February, 04 2022

M/s Bombay Chemical Industries
VERSUS
Deputy Labour Commissioner & Anr.

Industrial Disputes Act,1947 - Section 33C(2) - Not open for the Labour Court to entertain disputed questions and adjudicate upon the employer - employee relationship - In an application under Section 33C(2) of the Industrial Disputes Act, the Labour Court has no jurisdiction and cannot adjudicate dispute of entitlement or the basis of the claim of workmen. It can only interpret the award or settlement on which the claim is based. *(Para 6)*

Industrial Disputes Act, 1947- Section 33C(2) - Prior adjudication or recognition of the disputed claim of the workmen, proceedings for computation of the arrears of wages and/or difference of wages claimed by the workmen shall not be maintainable under Section 33C(2) of the Industrial Disputes Act. *(Para 6)*

Industrial Disputes Act, 1947 - Section 33C(2) - The benefit sought to be enforced under Section 33-C (2) of the ID 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 ID Act while the latter does not. *(Para 6)*

For Appellant(s) Mr. Vishal Yadav, Adv. Mr. Kuldeep Singh Kuchaliya, Adv. Mr. Ajay Pal, AOR

For Respondent(s) Dr. Vinod Kumar Tewari, AOR Mr. Pramod Tiwari,Adv Mr. Manindra Dubey,Adv Mr. Vivek Tiwari,Adv Ms. Priyanka Dubey,Adv.

J U D G M E N T

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 14.11.2018 passed by the High Court of Judicature at Allahabad in Writ Petition No.33482 of 2018, by which the High Court has dismissed the said writ petition preferred by the appellant herein and has confirmed the order passed by the Presiding Officer, Labour Court IV, U.P., Kanpur Nagar, under Section 33(C) (2) of the Industrial Disputes Act, the original writ petitioner has preferred the present appeal.

2. That respondent No.2 herein moved an application before the Labour Court under Section 33(C)(2) of the Industrial Disputes Act in Misc. Case No.26 of 2012 demanding the difference of wages from 01.04.2006 to 31.03.2012. The said application was contested by the appellant herein denying any relationship of employee-employer. It was the categorical stand of the appellant that respondent No.2 herein was never engaged by it. Before the Labour Court respondent No.2 herein relied upon the documents exhibit W1 to W6 in support of his case that he had worked in the establishment as a salesman. That by order dated 28.11.2017 the learned Presiding Officer, Labour Court allowed the said application and directed the appellant herein to pay the difference of wages from 01.04.2006 to 31.03.2012 as claimed in the application.

2.1 Feeling aggrieved and dissatisfied with the impugned order passed by the learned Presiding Officer, Labour Court under Section 33(C)(2) of the Industrial Disputes Act, the appellant herein preferred a writ petition before the High Court. By the impugned judgment and order the High Court has dismissed the said writ petition which has given rise to the present appeal.

3. Shri Vishal Yadav, learned counsel appearing on behalf of the appellant has vehemently submitted that in the facts and circumstances of the case the High Court has erred in dismissing the writ petition and confirming the order passed by the Labour Court under Section 33(C)(2) of the Industrial Disputes Act.

3.1 It is submitted by Shri Yadav appearing on behalf of the appellant that the High Court ought to have appreciated that when there was a serious issue raised with respect to the employer-employee relationship between the appellant and respondent No.2 and that it was seriously disputed that respondent No.2 was at any point of time in employment as a salesman, the Labour Court ought not to have entertained/allowed the application under Section 33(C)(2) of the Industrial Disputes Act as the same could have been decided in the reference under Section 10 of the Industrial Disputes Act. It is therefore submitted that the order passed by the Labour Court is completely without jurisdiction. Therefore, the High Court ought to have set aside the same. Reliance is placed on the decisions of this Court in the case of **Municipal Corporation of Delhi Vs. Ganesh Razak and Anr.**, (1995) 1 SCC 235 and **Union of India and another Vs. Kankuben (Dead) By Lrs. and Others,** (2006) 9 SCC 292, in support of his submissions that in a proceeding under Section 33(C)(2) of the Industrial Disputes Act, the Labour Court cannot adjudicate the dispute of entitlement or the basis of the claim and it can only interpret the award or settlement on which the claim is based.

3.2 Making the above submissions and relying on the above decisions, it is prayed to allow the present appeal.

4. The present appeal is vehemently opposed by Dr. Vinod Kumar Tewari, learned counsel appearing on behalf of the respondent(s).

4.1 It is submitted that in the present case respondent No.2 placed on record voluminous record namely exhibit W1 to W6 to show that respondent No.2 was working as a salesman with the appellant. It is submitted that the appellant came out with a false case to get out of the obligation difference in salary to be paid as claimed in the application. It is therefore submitted that when on appreciation of evidence and considering the material available on record the Labour Court held that respondent No.2 was employed as a salesman and thereafter directed the appellant to pay the difference of wages it cannot be said that the Labour Court exceeded in its jurisdiction.

4.2 It is submitted that when on the face of the record available it was found by the Labour Court that respondent No.2 was in employment of the appellant as a salesman, and in the claim before the Labour Court there was found a difference in the salary/pay for the period from 01.04.2006 to 31.03.2012, the Labour Court has not committed any error. The High Court has rightly dismissed the writ petition.

5. We have heard the learned counsel appearing on behalf of the respective parties at length.

6. At the outset it is required to be noted that respondent No.2 herein filed an application before the Labour Court under Section 33(C)(2) of the Industrial Disputes Act, demanding difference of wages from 01.04.2006 to 31.03.2012. It was thus the case on behalf of respondent No.2 that he was working with the appellant as a salesman. However, the appellant had taken a categorical stand that respondent No.2 was never engaged by the appellant. It was specifically the case on behalf of the appellant that respondent No.2 had never worked in the establishment in the post of salesman. Therefore, once there was a serious dispute that respondent No.2 had worked as an employee of the appellant and there was a very serious dispute raised by the appellant that respondent No.2 was not in employment as a salesman as claimed by respondent No.2, thereafter, it was not open for the Labour Court to entertain disputed questions and adjudicate upon the employer-employee relationship between the appellant and respondent No.2. As per the settled proposition of law, in an application under Section 33(C)(2) of the Industrial Disputes Act, the Labour Court has no jurisdiction and cannot adjudicate dispute of entitlement or the basis of the claim of workmen. It can only interpret the award or settlement on which the claim is based. As held by this Court in the case of **Ganesh Razak and Anr.** (supra), the labour court's jurisdiction under Section 33(C)(2) of the Industrial Disputes Act is like that of an executing court. As per the settled preposition of law without prior adjudication or recognition of the disputed claim of the workmen, proceedings for computation of the arrears of wages and/or difference of wages claimed by the workmen shall not be maintainable under Section 33(C)(2) of the Industrial Disputes Act. *(See **Municipal Corporation of Delhi Vs. Ganesh Razak and Anr. (1995) 1 SCC 235**).*

In the case of **Kankuben** (supra), it is observed and held that 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 33C (2) of the ID Act. It is further observed that the benefit sought to be enforced under Section 33C (2) of the ID Act is necessarily a preexisting benefit or one flowing from a preexisting 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 under Section 33C (2) of the ID Act while the latter does not.

7. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, when there was no prior adjudication on the issue whether respondent No.2 herein was in employment as a salesman as claimed by respondent No.2 herein and there was a serious dispute raised that respondent No.2 was never in employment as a salesman and the documents relied upon by respondent No.2 were seriously disputed by the appellant and it was the case on behalf of the appellant that those documents are forged and/or false, thereafter the Labour Court ought not to have proceeded further with the application under Section 33(C)(2) of the Industrial Disputes Act. The Labour Court ought to have relegated respondent No.2 to initiate appropriate proceedings by way of reference and get his right crystalized and/or adjudicate upon. Therefore, the order passed by the Labour Court was beyond the jurisdiction conferred under Section 33(C)(2) of the Industrial Disputes Act. The High Court has not appreciated the aforesaid facts and has confirmed the same without adverting to the scope and ambit of the jurisdiction of the Labour Court under Section 33(C)(2) of the Industrial Disputes Act.

8. In view of the above and for the reasons stated above the present appeal succeeds. The impugned judgment and order passed by the High Court as well as that of the order passed by the Labour Court under Section 33(C)(2) of the Industrial Disputes Act in Misc. Case No.26 of 2012 are hereby quashed and set aside. Respondent No.2 is relegated to avail any other remedy which may be available under the Industrial Disputes Act, including that of reference to adjudicate his right as an employee of the appellant as claimed by him. As and when such proceedings are initiated the same to be considered in accordance with law and on its own merits and without in anyway being influenced by the present order, as this Court has not expressed anything in favour of either of the parties on the aspect of employer-employee relationship between the appellant and respondent No.2. The present appeal is allowed with the above observations and to the aforesaid extent. No costs.