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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on 2nd February, 2022

Date of decision: 15th March, 2022

\+ **W.P.(C) 10809/2020**

M/S GARRISON ENGINEER (CENTRAL),
DELHI CANTT ..... Petitioner

Through: Mr. Apoorv Kurup, Ms. Nidhi Mittal, Ms. Akshata Singh & Mr. Ojaswa Pathak, Advocates (M-8800185864)

versus

M.J. PRASAD & ORS. ..... Respondents

Through: Ms. Meghna De, Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

Brief Facts

1. This is a petition challenging the impugned orders dated 30th October, 2019, 27th July, 2020, and 20th August, 2020 by which notice for recovery for a sum of Rs.1,95,980/- and for attachment of property under Sections 136 and 139 of the Delhi Land Reforms Act, 1954, has been issued to the Petitioner/Management (*hereinafter "Management"*), by the SDM, Delhi Cantt. and by the Regional Labour Commissioner (Central), Delhi (*hereinafter "RLC"*).

2. This petition has a long history. The Respondent-Workman (*hereinafter "Workman"*) was an employee of the Management since 1982 and he was working as a wireman. He was regularized in 1984 but was terminated vide order dated 15th November, 1985. The said termination was challenged by the Workman. Vide final order dated 16th June, 2000, the termination was held to be valid and justified by the CGIT in ***ID No.87/87***

titled ***MJ Prashad v. AGEB&RT Garrison Engineer (Central)***. This order was challenged by the Workman before a ld. Single Judge of this Court in ***W.P.(C) 6796/2001*** titled ***MJ Porashad v. AGEBR&T Garrison Engineer (Central) & Anr.*** Vide order dated 17th April, 2012, this writ petition of the Workman was allowed in the following terms:

> *"xxx xxx xxx*
> *10. The management had also contested the claim of the workman on the ground that his initial appointment was illegal and therefore, it was justified in invoking Sub-Rule 1 of Rule 5 of CCS (TS) Rules, 1965. As far as that part of the defence of the respondent is concerned, it has failed to establish the same by not adducing any evidence to show that the initial appointment of the petitioner-workman was illegal.*
> ***11.*** *I, therefore, allow this writ petition. The impugned Award of CGIT is set aside. The termination of services of petitioner-workman is held to be in breach of mandatory provisions of Section 25-F of Industrial Disputes Act. Now, it is well settled by the decisions of Hon'ble Supreme Court that once the termination of services of an industrial worker is found to be in violation of the mandatory provisions of Section 25-F of the Industrial Disputes Act, the termination is void ab initio. Reference in this regard can be made to one decision of the Supreme Court in the case of* ***"Anoop Sharma Vs. Executive Engineer, Public Health Division No. 1, Panipat", (2010) 5 SCC 497.*** *Resultantly, the petitioner-workman is ordered to be reinstated in service. As far as the back wages are concerned, considering all the facts and circumstances and particularly the fact that he had worked as a regular employee only for a short period, the respondent no. 1-management shall pay him only 50% of his back wages. The petition stands*

disposed of accordingly."

3. The appeal against the said order of the ld. Single Judge was dismissed by the Division Bench, on the ground of delay in filing the same, on 4th January, 2013, in ***LPA No.764/2012*** titled ***AGEB&R Garrison Engineer (Central) v. MJ Porashad & Anr.*** and the ***SLP (C.) No.14018/2013*** titled ***AGEB & R Garrison Engineer (Central) v. MJ Porashad & Anr.***, against the said order was also dismissed on 3rd November, 2014. Thus, the order of the ld. Single Judge setting aside the termination of the Workman and awarding reinstatement and 50% back wages has attained finality.

4. In terms of the said order dated 17th April, 2012, certain payments have been made by the Petitioner to the Workman. The Workman has also provided an undertaking dated 1st June, 2015, confirming receipt of specific payments to the following effect:

> "
> ***UNDERTAKING***
>
> *I MES-371450 MJ Prasad, Elect (SK) undertake that I have received the following arrears of my pay & allowances:-*
>
> *(a) 15.11.85 to 31 .07.2012 = 50% back wages of Rs 11,69,823/- vide GE (Central) Delhi Cantt Cheque No. 797470 dt 23 Feb 2015.*
>
> *(b) 01 .08.2012 to 21 .04.2015 - 50% back wages of Rs 476075/- received from GE (Central) Delhi Cantt vide cheque No. 797560 dt 30.05.15 on 01 Jun 2015*
>
> *(c) 22.04.2015 to 31.05.2015-1 have been reinstated in service wef 22 Apr 2015 and received the full ·salary from 22.04.2014 to -31.05.2015.*
>
> *2. As per, Hon'ble High Court Judgement of CWP 6769/2001 dt 12 Apr 2012. I have received all the 50% Payment of back wages and reinstate in service wef 22 Apr 2015 and received full salary as such the following court cases may be closed*

please:-

(a) CWP 6796/2001
(b) WP(C) 8858/2014
(c) WP(c) 7317/2014"

5. The Workman thereafter raised a further claim of Rs.7 lakhs towards some arrears, etc., part of which was also cleared in March, 2016, in the following terms as back wages:

> *"I MES-371450 M J Prasad, Elect (SK) has received the payment of arrear wef 17 Apr 2012 to 21 Apr 2015 of balance 50 % back wages of Rs. 5,14,066/- (Rupees **five** Lakh fourteen thousand sixty six only) vide GE (Central) Delhi Cantt Cheque **No·.** 797768 dated 09 Mar 2016 reinstated in service as per the Hon'ble High Court judgement of CWP 6796/2001 dated 17 Apr 2012. The Cheque will be cleared subject to decision received from Govt of India, Min of Defence."*

6. The issue in the present appeals is only in respect of a balance sum of Rs.1,95,900/-. This, according to the Workman, constitutes the amounts payable to him, towards Modified Assured Career Progression/ Assured Career Progression (*hereinafter "MACP/ACP"*), on the ground that his reinstatement had been ordered and therefore, he ought to be deemed to have been in service as the termination was held void *ab initio.*

7. This claim of MACP/ACP benefits has been allowed by the Regional Labour Commissioner *(hereinafter "RLC")*, under Section 33C(1) of the Industrial Disputes Act, 1947 (*hereinafter "ID Act"*). Consequential orders have been passed for attachment and for recovery of the said amounts vide the impugned orders.

Submissions

8. Mr. Apurv Kurup, ld. counsel for the Management, makes the following submissions in support of the contention that MACP/ACP benefits are not payable to the Workman:

(i) The preliminary objection of the Management is that the question regarding whether MACP/ACP Benefits were due or not, could not have been gone into by the RLC in proceedings under Section 33C(1) of the ID Act, as that would amount to exercise of adjudicatory powers by the RLC, which he is not entitled to do under this provision. Section 33C(1) is only a provision for recovery of money due from the employer. He relies upon the judgment in ***M/s. Fabril Gasosa v. Labour Commissioner, 1997 [3] SCC 150*** at paragraph 19, to submit this. In effect, the RLC has adjudicated upon the MACP/ACP benefits under the garb of recovery proceedings which is impermissible in law and beyond his powers in proceedings under Section 33C(1) of the ID Act.

(ii) Further, that MACP/ACP benefits are not a matter of right and can only be granted to those workmen who have passed a trade test. In this case, the Workman admittedly having not passed the trade test, is not entitled to MACP/ACP benefits. For this submission, Mr. Kurup relies upon the judgment of the Supreme Court in ***Anil Kumar v. Union of India & Ors., (2019) 4 SCC 276*** at paragraph 17. In the facts of the present case, he shows that the requirement of a trade test arises out of certain office memorandums, one being ***OM No.35034/1/97-Estt(D)*** dated 9th August, 1999, issued by the Government of India, Ministry of Personnel, Public Grievances and

Pensions and second, the clarification dated 21st December, 2000 and Clarification being ***85610/47/ACP/IND/Scheme/CSCC,*** dated 10th December, 2007, issued by the Dte Gen of Personnel, Army Headquarters, New Delhi. Since the office memorandums make it clear in paragraphs 4 and 6 that the MACP/ACP benefits would be given, subject to fulfilment of prescribed conditions, which include the trade test, and no trade test has been admittedly passed by the Workman, the grant of MACP/ACP benefits is not a matter of right.

(iii) That this aspect of the requirement of a trade test was placed before the RLC but has not been considered. He refers to page 136 of the writ petition to argue that this issue was specifically raised in the reply by the Management to the Show Cause notice being Reply dated 29th July, 2019, in ***Ref No. 17/M-14/2015-B-II*** before the RLC.

(iv) Finally, Mr. Kurup, ld. counsel, addresses the Workman's contention, that no document was produced before the RLC to show that trade test was required. For this, he submits that after the order dated 26th April, 2019, whereby the RLC held that the Management had not produced documents to show that trade test had been actually required of similarly placed employees, a show cause notice was issued to the Management. In response to this, in the reply of the Management dated 29th July, 2019, at least three documents were filed, as Annexures – C & D to show that a trade test is required for award of ACP/MACP benefits. Despite this, the impugned orders were issued. Therefore, he submits that in the present case, admittedly, the Workman has not qualified the trade test and hence,

he is not entitled to ACP/MACP benefits.

(v) In any event, in so far as the question as to whether such benefits were actually due or not, the stand of the Management is that the Court had finally, only awarded reinstatement with 50% back wages and no consequential benefits were directed to be given. Therefore, the contention of the Workman that reinstatement includes continuity of service and he should be deemed to have been in employment for the period prior to reinstatement, is not tenable in this case, as discretionary relief was granted by the learned Single Judge. In such cases, MACP/ACP benefits cannot be granted.

(vi) In order to support this contention, Mr. Kurup, ld. counsel, submits that the law on this has been settled by the Supreme Court in ***J.K. Synthetics Ltd. v. K.P. Agrawal and Anr., (2007) 2 SCC 433*** in paragraph 17, wherein it has been held that consequential benefits and continuity of service is not automatic. He fairly concedes before the Court that the said judgment of ***J.K. Synthetics Ltd. (supra)*** was considered by the Supreme Court later in ***Deepali Gundu Surwase v. Kranti Junior Adhyapak & Ors., (2013) 105 SCC 324*** wherein the observations in paragraph 17 of ***J.K. Synthetics Ltd. (supra)*** have been overruled.

(vii) However, he also places before the Court that recently in ***Om Pal Singh v. Disciplinary Authority & Ors., (2020) 3 SCC 103***, the ***J.K. Synthetics Ltd. (supra)*** judgment has again been followed by the Supreme Court and it has been held that that though reinstatement may be directed, back wages or continuity of service or consequential benefits do not follow as a necessary consequence of

such reinstatement, unless they are specifically granted and recognized. He submits that this position has also been reiterated by the Supreme Court very recently in ***Abhishek Kumar Singh v. G. Pattanaik, (2021) 7 SCC 613*** at paragraph 67.

(viii) Finally, he addresses the two judgments of the Division Bench of this Court cited by the Workman to aver that a specific direction for consequential benefits is not required. He submits that these two judgments of the Delhi High Court are ***Mahabir Prasad v. DTC, (2014) 144 DRJ 422*** and ***Jagdish Chander v. DTC, 2020 LLR 754***. However, both have relied upon the judgment of the Supreme Court in ***Deepali Gundu (supra)***, to hold that whenever reinstatement is directed, continuity of service is the norm. He submits that these judgments would not be in line with the recent views taken by the Supreme Court in ***Abhishek Kumar Singh (supra)*** and ***Om Pal Singh(supra)*** which reiterate ***J.K. Synthetics (supra)***.

(ix) Mr. Kurup, ld. counsel for the Management, concludes by saying that the judgment of the ld. Single Judge in this case dated 17th April, 2012, did not give any 'consequential benefits' or 'continuity of service', despite having the discretion to do so. In this light, he also distinguishes between the portion of ***J.K. Synthetics (supra)*** that has been overruled in ***Deepali Gundu (supra)*** and the portion that is relevant for this case. He points out that the Court in ***Deepali Gundu (supra)*** merely makes an observation in respect of ***J.K. Synthetics (supra)*** on one aspect discussed in ***J.K. Synthetics (supra)*** in para 38.7, i.e., on 'continuity of service' but not on the other aspects in ***J.K. Synthetics (supra)***, i.e., 'consequential benefits', which was

not even in question in ***Deepali Gundu***. Both are two Judge benches of the Supreme Court. He submits that thereafter the principle of law in ***J.K. Synthetics (supra)*** has been reaffirmed to the effect that 'continuity of service' and 'consequential benefits' are two different terminologies and two different reliefs are to be given by exercise of discretion by the Court. Therefore, in the present case, by not granting the relief of 'consequential benefits', the ld. Single Judge has exercised his discretion and now MACP/ACP benefits cannot be included in the said award.

9. On the other hand, Ms. Meghna De, ld. Counsel appearing for the Workman, makes the following submissions to support the contention that the Workman is entitled to MACP/ACP benefits:

(i) On the powers of the RLC under Section 33C(1) of the ID Act, Ms. De submits that the grant of MACP/ACP benefits is a mere calculation, and not an adjudication. Therefore, calculation of MACP/ACP benefits is within the powers of the RLC and the impugned orders are valid.

(ii) In response to Mr. Kurup's argument that the Workman cannot be awarded MACP/ACP benefits without passing a trade test and the RLC has not considered this, she submits that the RLC has fully considered this issue. She relies upon the order of the RLC dated 23rd January, 2018, where the RLC gives an opportunity to the Management to establish as to whether the trade test was actually necessary or not and whether the same was insisted upon in the case of other workmen. Thereafter, she brings to the Court's notice that despite the Management being given an opportunity to show that the

requirement of trade test was actually followed, vide order dated 26th April, 2019, translated copy of which has been placed on record, the RLC clearly held that no material was produced before him by the Management to show whether any trade test was insisted upon for grant of ACP/MACP benefits in respect of similarly placed employees. Therefore, the impugned recovery certificates were issued.

(iii) Finally, she submits that the Workman has superannuated in February, 2020, and he was never asked to take a trade test. Neither is there an allegation by the Management that he failed such a test.

(iv) In so far as the question of whether the award includes the grant of MACP/ACP benefits, Ms. De, ld. counsel, submits that in this case, the learned Single Judge had held the termination of the Workman to be void *ab initio*. This term has a meaning in law. She relies upon ***Mohan Lal v. Management, AIR 1981 SC 1253*** at paragraphs 10, 18 and 19 to argue that whenever a termination is held to be void *ab initio*, there would be no cessation of service and the workman continues to be in service with all consequential benefits. Though the back wages may be reduced, other benefits which were to be given to the Workman cannot be deprived of. She also relies upon ***Gurpreet Singh v. State of Punjab, (2002) 9 SCC 492*** to argue that whenever the termination is held to be void *ab initio*, it is presumed that it is with consequential benefits. Further, ***Om Prakash & Ors. v. Delhi Jal Board, 2015 XAD (Delhi) 448***, is pressed into service where the ld. Single Judge of this Court, in paragraph 18, observed that when back wages are granted and reinstatement is directed,

continuity of service has to be read into the same.

(v) In response to Mr. Kurup's reliance on the decision in ***J.K. Synthetics (supra),*** she submits that in ***Mahabir Prasad(supra)***, a Division Bench of this Court holds, considering both ***J.K. Synthetics (supra)*** and ***Deepali Gundu(supra)*** in paragraph 19, that a specific direction for consequential benefits is not required. As far as the judgment in ***Abhishek Kumar(supra)*** is concerned, she submits that the said judgment would be of no application in this case as the same related to a case where the Workman was held guilty of misconduct and was hence terminated initially, but a lesser punishment was thereafter imposed. In such cases, consequential benefits may or may not be granted, but the factual position is different in the present case, where the Workman was held to be terminated in violation of Section 25-F of the ID Act.

(vi) Finally, she submits that since 2015, the application of the Workman for MACP/ACP benefits is pending and even in the past, the Workman has been made to struggle even to obtain his back wages and dues, in terms of the judgment of this Court dated 17th April, 2012, which judgment was upheld right till the Supreme Court. Therefore, the Management has been constantly delaying the recovery of dues of the Workman and this cannot be continued.

Analysis and Findings

10. Heard the ld. counsels for the parties and perused the record.

11. The issue raised in the present petition is in respect of implementation of the CGIT Award in ***ID No.87/87*** titled ***MJ Prashad v. AGEB&RT,*** which was finally disposed of in ***W.P.(C) 6796/2001*** titled ***MJ Parishad v.***

AGEBR&T, vide order dated 17th April, 2012. The said order attained finality. Thereafter, the Workman commenced proceedings under Section 33C(1) of the Industrial Disputes Act, 1947 (*hereinafter "ID Act"*) seeking payment of various amounts, which according to him were due in terms of the said order dated 17th April, 2012. Pursuant to the same, the RLC issued notice to the Management informing it that the Workman's claim is for a sum of Rs.7,10,046/- but he was only paid Rs.5,14,066/-. Since the remaining amount of Rs.1,95,980/- was not paid, the Workman prayed for issuance of recovery certificate. The communication to this effect was issued by the Management on 10th April, 2017. On 20th April, 2017, the Management by letter No.1300/MJP/871/E1C, informed the RLC that the following payments have been made to the Workman:

> *"(d) Rs.1169,823/- through Ch No.797470 dt 23/02/15, CBI No.168/23/02/15*
> *(e) Rs.4,76,075/- through Ch No.797560 dt 30/05/15, CBI No.4/30/05/15*
> *(f) Rs.5,14,066/- through DD No.836880 dt 01/12/16, CBI No.33/9/03/16"*

12. It further clarified on 10th June, 2017, by letter No.1300/MJP/881/E1C, issued to the RLC, that the difference in the payments made to the Workman is due to the disallowance on financial upgradation under MACP/ACP. The said communication is relevant and is set out below:

> ***"IMPLEMENTATION OF AWARD NO ID 87/87 BETWEEN SHRI MJ PRASAD S/O LATE M. CHAUDHARY WIREMAN VIS MIS GARRISON ENGINEER (CENTRAL). DELHI CANTT (LABOUR COMMISIONER ORDER NO ND/17/M-14/15-8 DT 9 OCT 2015)***
> *1. Ref hearing outcome by Regional Labour Commissioner (C), New Delhi*

dt 23 May 2017.
2. The individual was not granted any financial upgradations under ACP/MACP, therefore no payment has been made to him. The difference in payment made to the individual and claimed by him is due to disallowance of financial upgradation (ACP / MACP) by the auditors.
3. The calculation sheet of final payment made to the individual is enclosed herewith for your perusal and further necessary action."

13. Thus, the Management disallowed the amount relating to ACP/MACP benefits.

14. The denial of MACP/ACP benefits is the subject matter of the present writ petition. There is no other dispute that has been raised in this case. Since the Management did not pay the said amount, recovery proceedings were initiated against it, by the RLC pursuant to Section 33C(1) of the ID Act and a show cause notice was issued on 11th July, 2019 which was duly replied to by the Management on 29th July, 2019. Despite the said reply, the impugned notice was issued under Section 136 of the DLR Act by the SDM, Delhi Cantt., for taking coercive measures for recovery of the amounts due to the Workman, including by issuance of warrants of attachment vide letter dated 4th September, 2020.

15. It is these recovery proceedings that are under challenge in this writ petition. The question is whether the Workman is entitled to MACP/ACP benefits in view of the order dated 17th April, 2022, passed in ***W.P.(C) 6796/2001***.

Reinstatement, Back wages, Continuity of Services, Consequential Benefits

16. Notably, various decisions relating to the consequences of

reinstatement have been cited by both parties and are discussed hereinafter.

17. ***Mohan Lal (supra)*** and ***Gurpreet Singh (supra)*** were decisions of the Supreme Court of the years 1981 and 2002 respectively. The said decisions were cases where the workmen had been retrenched in violation of Section 25-F of the ID Act and reinstatement had been granted but back wages and continuity of service had been denied by the High Court. The Supreme Court, in appeal, granted the same holding the termination to be *void ab initio.* Herein, the Court acknowledged that as per some other decisions, granting reinstatement or compensation would require the Court to exercise discretion, and on facts of ***Mohan Lal (supra)***, it held that there was no case made out for departure from the normal rules of grating reinstatement and consequential benefits. In ***Gurpreet Singh (supra)***, the Court did not provide a detailed explanation of the facts or law, but held that since reinstatement had been granted, continuity of service would also be granted.

18. Thereafter, in ***J.K. Synthetics Ltd. (supra)***, the question that arose before the Supreme Court was, in a case where the workman had been initially dismissed due to misconduct but the said punishment was reduced to stoppage of increments for a few years, i.e., other lesser punishments, and the workman was reinstated, whether the workman is entitled to back wages from the date of termination till the date of reinstatement. In the said decision, the Court made the following observations:

> *"17. There is also a misconception that whenever reinstatement is directed, 'continuity of service' and 'consequential benefits' should follow, as a matter of course. The disastrous effect of granting several promotions as a 'consequential benefit' to a person who has not worked for 10 to 15 years and who does not have the benefit of necessary experience for*

discharging the higher duties and functions of promotional posts, is seldom visualized while granting consequential benefits automatically. Whenever courts or Tribunals direct reinstatement, they should apply their judicial mind to the facts and circumstances to decide whether 'continuity of service' and/or 'consequential benefits' should also be directed. We may in this behalf refer to the decisions of this Court in A.P.S.R.T.C. v. S. Narasa Goud MANU/SC/0027/2003 :(2003)ILLJ816SC , A.P.S.R.T.C. v. Abdul Kareem MANU/SC/0448/2005 : (2005)IIILLJ477SC andR .S.R.T.C. v. Shyam Bihari Lal Gupta MANU/SC/0552/2005 : AIR2005SC3476

Coming back to back-wages, even if the court finds it necessary to award backwages, the question will be whether back-wages should be awarded fully or only partially (and if so the percentage). That depends upon the facts and circumstances of each case. Any income received by the employee during the relevant period on account of alternative employment or business is a relevant factor to be taken note of while awarding back-wages, in addition to the several factors mentioned in Rudhan Singh (supra) and Udai Narain Pandey (supra).

19. ***But the cases referred to above, where back-wages were awarded, related to termination/retrenchment which were held to be illegal and invalid for non-compliance with statutory requirements or related to cases where the court found that the termination was motivated or amounted to victimization.*** *The decisions relating to back wages payable on illegal retrenchment or termination may have no application to the case like the present one, where the termination (dismissal or removal or compulsory retirement) is by way of punishment for misconduct in a departmental inquiry, and the court*

confirms the finding regarding misconduct, but only interferes with the punishment being of the view that it is excessive, and awards a lesser punishment, resulting in the reinstatement of employee. Where the power under Article 226 or Section 11A of the Industrial Disputes Act (or any other similar provision) is exercised by any Court to interfere with the punishment on the ground that it is excessive and the employee deserves a lesser punishment, and a consequential direction is issued for reinstatement, the court is not holding that the employer was in the wrong or that the dismissal was illegal and invalid. The court is merely exercising its discretion to award a lesser punishment.

...

Therefore, where reinstatement is a consequence of imposition of a lesser punishment, neither back-wages nor continuity of service nor consequential benefits, follow as a natural or necessary consequence of such reinstatement. In cases where the misconduct is held to be proved, and reinstatement is itself a consequential benefit arising from imposition of a lesser punishment, award of back wages for the period when the employee has not worked, may amount to rewarding the delinquent employee and punishing the employer for taking action for the misconduct committed by the employee. That should be avoided. Similarly, in such cases, even where continuity of service is directed, it should only be for purposes of pensionary/retirement benefits, and not for other benefits like increments, promotions etc.

20. But there are two exceptions. The first is where the court sets aside the termination as a consequence of employee being exonerated or being found not guilty of the misconduct. Second is where the court reaches a conclusion that the

> *inquiry was held in respect of a frivolous issue or petty misconduct, as a camouflage to get rid of the employee or victimize him, and the disproportionately excessive punishment is a result of such scheme or intention. In such cases, the principles relating to back-wages etc. will be the same as those applied in the cases of an illegal termination.*"

19. This decision was subsequently considered in ***Deepali Gundu (supra)*** wherein the Supreme Court was dealing with a case where an employee of a school was terminated. The said termination was set aside by the School Tribunal and reinstatement with full back wages was directed. Upon challenge against the Tribunal's order, the quashing of termination was upheld by the High Court but the direction for back wages was set aside. The Supreme Court considered ***Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd., (1979) 2 SCC 80***, which observes that when termination is found to be invalid, award of full back wages is the normal rule. Though, the Supreme Court notes even in ***Hindustan Tin Works (supra)*** that there can be no straight jacket formula for awarding back wages. The Court in ***Deepali Gundu (supra),*** further analysed various other decisions on this issue, including ***J.K. Synthetics (supra)*** and culled out the position of law as under:

> *"33. The propositions which can be culled out from the aforementioned judgments are:*
> *i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.*
> *ii)* ***The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if***

any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

XXX

iv) The cases in which the Labour Court/Industrial Tribunal exercises power Under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

v) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings

by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

vi) In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (supra).

vii) The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman."

20. Thus, the view of the Supreme Court in ***Deepali Gundu (supra)*** was

that the observation in ***J.K. Synthetics (supra)*** that grant of continuity of service is not a right, cannot be treated as good law. However, since both decisions were by co-ordinate Benches, they have been the subject matter of discussion in further decisions.

21. Most recently, the decisions in ***J.K. Synthetics (supra)*** and ***Deepali Gundu (supra)*** were considered in two Division Bench decisions of this Court in ***Mahabir Prasad (supra)***, and ***Jagdish Chander (supra).*** In ***Mahabir Prasad (supra)***, reinstatement was directed by the Labour Commissioner, with continuity of service but without back wages. Thereafter, DTC reinstated the workman without any back wages and without any benefits on notional pay fixation, promotion, ACP, increments and withheld pension and terminal benefits also. Challenging this, the Workman claimed that since "continuity of service" was directed, he would be entitled to pension and other terminal benefits. In this case, the Division Bench of this Court observes as under:

> *"20. The above discussion reveals that there appeared to be no standard pattern of directing how a reinstated employee is to be given the benefit after reinstatement. In Deepali Gundu Surwase(supra), for the first time, the restitutionary principle underlying reinstatement and other benefits was spelt out and a semblance of uniformity was attempted. If that is to be kept in mind, what is apparent in this case is that the petitioner had to battle for over a decade and a half to secure justice. The Labour Court held that that the enquiry against him illegal; went into the material an found that the charge of misconduct was baseless. It consequently directed reinstatement without back wages. Whilst the denial of back wages is not in question, the Award directed continuity of service. If DTC's contention were to be accepted, the petitioner would*

stand doubly penalized for the delay in securing justice, plainly for no fault of his. The denial of 15 years' salary would result in his denial of pension, or at least a vastly diminished pension, gratuity and other terminal benefits. If these benefits are denied, the direction to grant continuity of service would be a hollow relief. Furthermore, to restore him in the pay scale at the stage of his termination would be to freeze him in a pay scale that is no longer existent, or at least unrecognizable. It is pertinent that a withholding of 2 increments for two years, with cumulative effect has been held to be a major penalty (imposable only after an enquiry) since the increments "would not be counted in his time-scale of pay" in perpetuity. In other words, the clock would be set back in terms of his earning a higher scale of pay, by two scales. See Kulwant Singh v. State of Punjab MANU/SC/0658/1991 : 1991 Supp (1) SCC 504. Keeping this in mind, if the petitioner were to be restored in the pay scale at the stage of his termination, it would amount to withholding several increments, and thus be equivalent to imposing a compounded major penalty.

21. Consequently, it is held that the direction to grant continuity meant that the petitioner had to be given notional increments for the duration he was out of employment, in the grade and the equivalent grade which replaced it later, till he reached the end of the pay scale. Since there is no direction to give consequential benefits, the petitioner cannot claim promotion as a matter of right; it would have to be in accordance with the rules. ACP benefits however, should be given. The notional pay fixation would also mean that he would be entitled to reckon the period between his removal and reinstatement as having been in employment for pension, gratuity, and contributions to provident fund etc. This Court directs the DTC to issue an order extending these

> *benefits to the petitioner for the 15 year period between his dismissal in 1995 and his eventual reinstatement in 2011, within eight weeks from today. The writ petition is allowed in these terms; there shall be no order as to costs."*

22. Similarly, in ***Jagdish Chander (supra)***, reinstatement was directed with full back wages. Upon challenge, the High Court in an LPA had modified this order to deny back wages, but DTC had agreed to not challenge reinstatement, to grant the benefit of continuity of service and to compute pension accordingly. Thereafter, the Workman was not given ACP benefits and various other benefits. Since the Division Bench in LPA had recorded that it was upholding the award basis DTC's assurance that continuity of service would be given, the Court directed the Workman's pay scale to be fixed by notionally granting him increments and benefits under the ACP scheme. The relevant portion of this decision reads as under:

> *"28. Therefore, what becomes clear from a perusal of the judgment in Mahabir Prasad (supra) is that reinstatement with continuity of service is the norm. While in Mahabir Prasad (supra) the Labour Court had ordered reinstatement with continuity but without back wages, in the present case the Labour Court ordered both reinstatement and full back wages. The DB of this Court modified the Award only to the extent of denying the Petitioner full back wages but acknowledged that the intent of the Award was to grant the Petitioner continuity of service. This is plain from the operative portion of the order of the DB partly allowing DTC's LPA. It explained the rationale for denial of full back wages as follows: "In our considered opinion, when the corporation has agreed not to challenge the order of reinstatement, extend the benefit of continuity of service and compute the pension on the said factual*

backdrop…

29. The CAT, in the impugned order, erred in denying the Petitioner the benefit of continuity in service upon reinstatement and in applying the law as explained in Mahabir Prasad (supra) that while this would not entitle him to promotions, the Petitioner would upon reinstatement be entitled to the increments on the pay scale he was drawing at the time of termination of his services and further that for the purpose of gratuity and pension he would be treated as having been in service throughout.

30. The CAT erred in referring to the decision of the Supreme Court in S. Narsagoud (supra) which has been squarely dealt with and rejected by a subsequent decision of the Supreme Court in Deepali Gundu Surwase (supra). In fact, the CAT failed to take notice of the aforesaid judgments in spite of the Petitioner raising this specific point in his RA No. 39/2016.

31. For the aforementioned reasons, the impugned orders of the CAT are hereby set aside. The Respondent/DTC is directed to:

i. Fix the Petitioner's pay scale by notionally granting him the increments and benefits under the ACP Scheme to which he now stands entitled."

23. As for other decisions concerning discretion in grant of reliefs when reinstatement is granted, it is important to refer to the Supreme Court decision in ***Rajasthan State Road Transport Corporation v. Phool Chand (Dead) through L.Rs., 2018 LLR 1169***. The Supreme Court again held that grant of back wages would not be a natural consequence upon a direction of the reinstatement, and the same is based on judicial discretion. The observation of the Supreme Court is as under:

"12. In some cases, the Court may decline to award

the back wages in its entirety whereas in some cases, it may award partial depending upon the facts of each case by exercising its judicial discretion in the light of the facts and evidence. The questions, how the back wages is required to be decided, what are the factors to be taken into consideration awarding back wages, on whom the initial burden lies etc. were elaborately discussed in several cases by this Court wherein the law on these questions has been settled. Indeed, it is no longer res integra. These cases are, M.P. State Electricity Board v. Jarina Bee (Smt.) MANU/SC/0462/2003 : (2003) 6 SCC 141, G.M. Haryana Roadways v. Rudhan Singh MANU/SC/0408/2005 : (2005) 5 SCC 591, U.P. State Brassware Corporation v. Uday Narain Pandey MANU/SC/2321/2005 : (2006) 1 SCC 479, J.K. Synthetics Ltd. v. K.P. Agrawal and Anr. MANU/SC/0741/2007 : (2007) 2 SCC 433, Metropolitan Transport Corporation v. V. Venkatesan MANU/SC/1414/2009 : (2009) 9 SCC 601, Jagbir Singh v. Haryana State Agriculture Marketing Board and Anr. MANU/SC/1213/2009 : (2009) 15 SCC 327) and Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors. MANU/SC/0942/2013 : (2013) 10 SCC 324.

13. The Court is, therefore, required to keep in consideration several factors, which are set out in the aforementioned cases, and then to record a finding as to whether it is a fit case for award of the back wages and, if so, to what extent.

14. Coming now to the facts of the case at hand, we find that neither the Labour Court and nor the High Court kept in consideration the aforesaid principles of law. Similarly, no party to the proceedings either pleaded or adduced any evidence to prove the material facts required for award of the back wages enabling the Court to award the back wages."

24. In ***Om Pal Singh v. Disciplinary Authority and Ors., (2020) 3 SCC 103***, a two Judge Bench of the Supreme Court again considered ***J.K. Synthetics (supra)*** and applied the same holding that consequential benefits and continuity of service as also grant of back wages is not a natural consequence of reinstatement. Thus, in ***Om Pal Singh (supra), J.K. Synthetics (supra)*** was again followed and applied. Notably, this was a case where the workman's punishment had been reduced from dismissal to reduction in time scale of pay. The Court also cited the portion of ***J.K. Synthetics (supra)*** that wherever reinstatement is granted, judicial mind should be applied to the facts to decide whether 'continuity of service' and/or 'consequential benefits' should also be directed.

25. Recently in ***Abhishek Kumar Singh v. G. Pattanaik, (2021) 7 SCC 613,*** the facts of the case were such that the recruitment process of the U.P. Jal Nigam had been annulled, thereby terminating the services of the petitioners therein. The High Court had set aside the said order and had directed the management to provide an opportunity of hearing to the petitioners. Meanwhile, the High Court also directed the management to permit the petitioners to "*work and be paid monthly regular salary*". In this background, the Supreme Court, in an SLP filed by the management, observed that the judgment in ***Deepali Gundu (supra)*** was a case of wrongful termination where relief of back wages was granted. In ***J.K. Synthetic (supra)***, it was held that award of back wages was not an automatic or natural consequence of reinstatement. However, both these decisions were not considered applicable in the facts of ***Abhishek Kumar (supra)*** and ultimately not applied.

26. An analysis of the above decisions would show that ***J.K. Synthetics***

(supra) was dealing with a case where reinstatement was directed after holding that the punishment of dismissal is to be replaced with a lesser punishment. Even in such a case, the Supreme Court directed that grant of back wages and continuity of service is not automatic. In ***Deepali Gundu (supra)***, the Supreme Court was dealing with a case where the termination was quashed and full back wages was directed to be paid. The manner in which ***Deepali Gundu (supra)*** has been applied by the Division Bench of this Court in ***Mahabir Prasad (supra)*** would show that it is only when there is a direction to give 'continuity of service' ACP benefits should be given. In fact, in ***Mahabir Prasad (supra)***, the Division Bench even notes that without a specific direction for 'consequential benefits', promotions cannot be claimed as a right, even though continuity of service was directed. Therefore, it recognizes a clear difference between continuity of service and consequential benefits, neither of which have been awarded in the present case. In ***Jagdish Chander (supra),*** the facts were different, as DTC had assured the Court that it would provide 'continuity of service' and then resiled. In ***Om Prakash (supra)***, a ld. Single Judge was considering a case where reinstatement was directed with immediate effect and whether in such a case regularisation ought to be given to the workman. In such a case the Court held that 'continuity of service' ought to be read into the relief of reinstatement and directed regularisation in accordance with the policy of the Management. Without going into the question as to whether ***J.K. Synthetics (supra)*** was overruled in ***Deepali Gundu (supra)*** or not, as the said issue may not arise in the present petition, it is relevant to note that in the present case, the operative portion of the order dated 17th April, 2012, passed by the Single Judge in the writ petition is as under:

"xxx xxx xxx

10. The management had also contested the claim of the workman on the ground that his initial appointment was illegal and therefore, it was justified in invoking Sub-Rule 1 of Rule 5 of CCS (TS) Rules, 1965. As far as that part of the defence of the respondent is concerned, it has failed to establish the same by not adducing any evidence to show that the initial appointment of the petitioner-workman was illegal.

***11.** I, therefore, allow this writ petition. The impugned Award of CGIT is set aside. The termination of services of petitioner-workman is held to be in breach of mandatory provisions of Section 25-F of Industrial Disputes Act. Now, it is well settled by the decisions of Hon'ble Supreme Court that once the termination of services of an industrial worker is found to be in violation of the mandatory provisions of Section 25-F of the Industrial Disputes Act, the termination is void ab initio. Reference in this regard can be made to one decision of the Supreme Court in the case of **"Anoop Sharma Vs. Executive Engineer, Public Health Division No. 1, Panipat", (2010) 5 SCC 497.** Resultantly, the petitioner-workman is ordered to be reinstated in service. As far as the back wages are concerned, considering all the facts and circumstances and particularly the fact that he had worked as a regular employee only for a short period, the respondent no. 1-management shall pay him only 50% of his back wages. The petition stands disposed of accordingly."*

27. Recently, a ld. single judge of this Court in ***Thomson Reuters India Private Limited v. Ld. Presiding Officer, Labour Court [W.P. (C) 3246/2020, decided on 30th September, 2021]***, has also considered all the

above decisions and emphasized that the nature of employment and length of service would be crucial factors in deciding the relief of reinstatement and back wages, and equities would have to be balanced.

28. In the present case, a perusal of the Statement of Claim filed by the Workman before the CGIT in ***I.D. No.87/87*** would show that the Workman had sought the following reliefs:

> *"It is, therefore, prayed that an award be passed in favour of the workman holding thereby that the termination of service of Shri M.J. Prashad w.e.f. 15.11.1985 was wholly illegal and Unjustified he is* ***entitled to reinstatement in service with full backwages and continuity in proper pay-scale as a regular employee****. It is further prayed that the suitable cost be also awarded as provided in section 11 (7) of the Industrial Deputes Act, 1947."*

29. The CGIT had dismissed the said claim vide order dated 16th June 2000. Notably, thereafter, when the writ petition being ***W.P(C.) 6796/2001*** was filed against the said CGIT order dated 16th June, 2000, the Workman's prayer was limited to reinstatement and back wages. The said prayers in that writ petition are as under:

> *"**PRAYER:***
> *ln view of the above mentioned facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:*
>
> *A) pass an order, direction or a writ in the nature of certiorari quashing the award dated 16.6.2000 passed by Respondent No.2* ***and reinstate the petitioner with full back wages****;*
> *B) Pass any other order/orders that may be deemed necessary under the circumstances of the case in the interests of Justice."*

30. A perusal of the above would show that the Workman had not merely sought reinstatement but also continuity of service, back wages and other benefits akin to a regular employee, in his Statement of Claim before the CGIT, but clearly the said relief was not sought before the High Court. Therefore, the Court took the facts and circumstances into consideration, including the fact that the Workman had worked only for a short period as a regular employee and directed ***"only 50% of his back wages"*** to be paid along with reinstatement. In effect, therefore, the relief(s) of grant of continuity of service or consequential benefits was neither prayed for nor granted by the High Court. The reliefs granted and due to the Workman, thus attained finality vide the order of the High Court dated 17th April, 2012. Thus, the submission of ld. counsel for the Workman that in all cases where reinstatement is directed, continuity of service and consequential benefits would be automatic, cannot be accepted in the light of the above legal position and the order of the ld. Single Judge only granting reinstatement with 50% back wages has attained finality.

Grant of MACP/ACP benefits not automatic without satisfaction of prescribed criteria

31. A further factor to be considered is that the grant of MACP/ACP benefits, as per the applicable policy of the Management is not automatic for all employees and is contingent upon satisfaction of certain specified criteria. The benefits of ACP/MACP in career progression, are usually granted to employees in order to avoid stagnation. Employees are permitted to take some exams/tests to avail of career progression and if they qualify for the same, MACP/ACP benefits are granted. The Supreme Court in ***Anil Kumar (supra)*** observed in respect of MACP/ACP benefits, in a case where the appellant had

challenged rejection of his claim for financial upgradation by the Council for Scientific and Industrial Research (CSIR), as under:

> *"The grant of MACP benefit is not a matter of right and it is after the Screening Committee finds that the officer meets the benchmark that an upgradation can be granted."*

32. In the present case, the office memorandum of the Management dated 9th August, 1999, which provided for MACP/ACP benefits reads as under:

> *"The Fifth Central Pay Commission in its Report has made certain recommendations relating to the Assured Career Progression (ACP) Scheme for the Central Government civilian employees in all Ministries/Departments. The ACP Scheme needs to be viewed as a 'Safety Net' to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. Accordingly, after careful consideration it has been decided by the Government to introduce the ACP Scheme recommended by the Fifth Central Pay Commission with certain* ***modifications*** *as indicated hereunder:-*
>
> *xxx xxx xxx*
>
> *3.* ***GROUP 'B', 'C' AND 'D' SERVICES/POSTS AND ISOLATED***
> ***POSTS IN GROUP 'A', 'B', 'C' AND 'D' CATEGORIES***
> *3.1* ***While in respect of these categories also promotion shall continue to be duly earned, it is proposed to adopt the ACP Scheme in a modified form to mitigate hardship in cases of acute stagnation either in a cadre or in an isolated post.*** *Keeping in view all relevant factors, it has, therefore, been decided to grant* ***two financial upgradations*** *[as recommended by the Fifth*

Central Pay Commission and also in accordance with the Agreed Settlement dated September 11, 1997 (in relation to Group 'C' and 'D' employees) entered into with the Staff Side of the National Council (JCM)] under the ACP Scheme to Group 'B', 'C' and 'D' employees on completion of ***12 years*** *and* ***24 years*** *(subject to condition no.4 in Annexure-I) of regular service respectively. Isolated posts in Group 'A', 'B', 'C' and 'D' categories which have no promotional avenues shall also qualify for similar benefits on the pattern indicated above. Certain categories of employees such as casual employees (including those with temporary status), ad-hoc and contract employees shall not qualify for benefits under the aforesaid Scheme. Grant of financial upgradations under the ACP Scheme shall, however, be subject to the* ***conditions*** *mentioned in Annexure-I.*

xxx xxx xxx

4. Introduction of the ACP Scheme should, however, in no case affect the normal (regular) promotional avenues available on the basis of vacancies. Attempts needed to improve promotion prospects in organisations/cadres on functional grounds by way of organizational study, cadre reviews, etc as per prescribed norms should not be given up on the ground that the ACP Scheme has been introduced.

xxx xxx xxx

6. ***SCREENING COMMITTEE***

6.1 A departmental Screening Committee shall be constituted for the purpose of processing the cases for grant of benefits under the ACP Scheme.

xxx xxx xxx

8. The ACP Scheme shall become operational from the date of issue of this Office Memorandum."

33. A perusal of the said OM dated 9th August, 1999 shows that there are separate requirements for each of the group of employees to avail of

ACP/MACP benefits. The same has various conditions as to which kind of employees are entitled to these benefits. It also contemplates the setting up of a Screening Committee for the purpose of processing the cases for grant of benefits under the ACP scheme. The OM is quite detailed and clear and, therefore, it would not be apposite to argue or hold that grant of MACP/ACP benefits by the Management *qua* employees governed by this OM is automatic. The requirements, the eligibility conditions, and the procedure for such grant having been prescribed, the same cannot be granted by merely reading it as part of 'consequential benefits' or 'continuity of service'. As per the clarifications issued on 21st December, 2000, and 10th December, 2007, the grant of MACP/ACP benefits requires that a trade test would have to be passed by the workmen in order to be entitled for upgradation. This clarification was on the record of the RLC but does not find any mention in the impugned orders.

Scope of proceedings under Section 33C(1)

34. Lastly, in so far as the arguments of the parties concerning the RLC's powers to grant MACP/ACP benefits at all is concerned, it is to be noticed that the application which was being dealt with by the RLC who was acting as the Recovery Officer, was under Section 33C(1) of the ID Act, which deals with *money due* to a Workman. Such an application does not contemplate an adjudication or an enquiry being held as to whether the Workman is entitled to the said benefits or not.

35. Section 33C (1) of the ID 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 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 of 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 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 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.

(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."

36. A perusal of the above provision shows that it relates to proceedings which are initiated where "*any money is due*" to any Workman from an employer under an award or a settlement. Thus, the question as to whether the

amount is due or not, is not expected to be gone into in the said proceedings. The interpretation of Section 33C was clarified by a Constitution Bench of the Supreme Court in ***Central Bank of India v. P. S. Rajagopalan, AIR 1964 SC 743***, as under:

> *"It is remarkable that similar words of limitation have been used in s. 33C (1) because s. 33 C (1) deals with cases where any money is due under a settlement or an award or under the provisions of Chapter VA. It is thus clear that claims made under s. 33C (1), by itself can be only claims referable to the settlement, award, or the relevant provisions of Chapter VA. These words of limitations are not to be found in s. 33C (2) and to that extent, the scope of s. 33C (2) is undoubtedly wider than that of s. 33C (1). It is true that even in respect of the larger class. of cases which fail under s. 33C (2), after the determination is made by the Labour Court the execution goes back again to s. 33C (1). That is why s. 33C (2) expressly provides that the amount so determined may be recovered as provided for in sub-section (1)."*

37. In ***Punjab National Bank Ltd., AIR 1963 SC 487***, the Supreme Court held that:

> *"It is clear therefore that s. 33-C is a provision in the nature of executing and where the amount to be executed is worked out (for example in an award) or where it may be worked out without any dispute, s. 33-C(1) will apply.* ***But where the amount due to workman is not stated in the award itself and there is a dispute as to its calculation, sub-s. (2) will apply*** *and the workman would be entitled to apply thereunder to have the amount computed provided he is entitled to a benefit, whether monetary or non-monetary which is capable of being computed in terms of money."*

38. Subsequently, in ***Fabril Gasosa & Ors. v. Labour Commissioner & Ors., 1997 (1) SCALE 544,*** the Supreme Court elaborated upon the powers under Section 33C(1) of the ID Act, being restricted to the extent of calculation of a pre-determined amount. The relevant observations of the Court are set out below:

> *"17. Section 33C is in the nature of execution proceedings designed to recover the dues to the workmen. Vide Section 33C(1) and (2), the legislature has provided a speedy remedy to the workmen to have the benefits of a settlement or award which are due to them and are capable of being computed in terms of money, be recovered through the proceedings under those Sub-sections. The distinction between Sub-section (1) and Sub-section (2) of Section 33C lies mainly in the procedural aspect and not with any substantive rights of workmen as conferred by these two Sub-sections. Sub-section (1) comes into play when on the application of a workman himself or any other person assigned by him in writing in this behalf of his assignee or heirs in case of his death, the appropriate Government is satisfied that the amounts so claimed are due and payable to that workman. On that satisfaction being arrived at, the Government can initiate action under this Sub-section for recovery of the amount provided the amount is a determined one and requires no 'adjudication.' The appropriate Government does not have the power to determine the amount due to any workman under Sub-section (1) and that determination can only be done by the Labour Court under Sub-section (2) or in a reference under Section 10(1) of the Act. Even after the determination is made by the Labour Court under Sub-section (2) the amount so determined by the Labour Court, can be recovered through the*

summary and speedy procedure provided by Sub-section (1). Sub-section (1) does not control or affect the ambit and operation of Sub-section (2) which is wider in scope than Sub-section (1). Besides the rights conferred under Section 33C(2) exist in addition to any other mode of recovery which the workman has under the law. An analysis of the scheme of Section 33C(1) and 33C(2) shows that the difference-between the two Sub-sections is quite obvious. While the former Sub-section deals with cases where money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or V-B, sub-section (2) deals with cases where a workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money. Thus, where the amount due to the workmen, flowing from the obligations under a settlement, is predetermined and ascertained or can be arrived at by any arithmetical calculation or simplistic verification and the only inquiry that is required to be made is whether it is due to the workman or not, recourse to the summary proceedings under-section 33C(1) of the Act is not only appropriate but also desirable to prevent harassment to the workmen. Sub-section (1) of Section 33C entitles the workmen to apply to the appropriate Government for issuance of a certificate of recovery for any money due to them under an award or a settlement or under the provisions of Chapter V A and the Government, if satisfied, that a specific sum is due to the workmen, is obliged to issue a certificate for the recovery of the amount due. After the requisite certificate is issued by the Government to the Collector, the Collector is under a statutory duty to recover the amounts clue under the certificate issued to him. The procedure is aimed at providing a speedy, cheap and summary manner of recovery of the amount due,

which the employer has wrongfully withheld. It, therefore, follows that where money due is on the basis of some amount predetermined like the VDA, the rate of which stands determined in terms of the settlement, an award or under Chapter V-A or V-B, and the period for which the arrears are claimed is also known, the case would be covered by sub-section (1) as only a calculation of the amount is required to be made.

18. A Constitution Bench of this Court in Kays Construction Co. (P) Ltd. v. State of Uttar Pradesh MANU/SC/0214/1964 : (1965)IILLJ429SC : MANU/SC/0214/1964 : (1965)IILLJ429SC , while considering the scope of Section 6-H(1) and (2) of the U.P. Industrial Disputes Act. 1947, which provisions are in pari materia to Section 33C(1) and (2):

The contrast in the two Sub-sections between 'money-due' under the first Sub-section and the necessity of reckoning the benefit in terms of money before the benefit becomes 'money due' under the second sub-section shows that mere arithmetical calculations of the amount due are not required to be dealt with under the elaborate procedure of the second sub-section. The appellant no doubt conjured up a number of obstructions in the way of this simple calculation. These objections dealt with the 'amount due' and they are being investigated because State Government must first satisfy itself that the amount claimed is in fact due. But the antithesis between 'money due' and a 'benefit which must be computed in terms of money' still remains, for the inquiry being made is not of the kind contemplated by the second Sub-section but is one for the satisfaction of the State Government under the first Sub-section. It is verification of the claim to money within the first Sub-section and not

> *<u>determination in terms of money of the value of a benefit.</u>*
>
> *19. The law laid down by the Constitution Bench applies with full force to the facts of the instant case and in view of the established facts and circumstances of this case, recourse to the proceedings under Section 33C(1) of the Act by the union was just and proper."*

39. This position was reiterated in ***M/s. Hamdard (Wakf) Laboratories v. Deputy Labour Commr. & Ors., AIR 2008 SC 968***, which held as under:

> *"An application under Section 33C(1) of the Industrial Disputes Act, 1947 must be for enforcement of a right. If existence of right, thus, is disputed, the provisions may not be held to have any application."*

40. Therefore, the settled position of law, is that in proceedings under Section 33C (1) of the ID Act, the RLC has limited powers and cannot exercise adjudicatory powers to ascertain whether the benefits claimed were due in the first place or not.

41. The RLC in this case, as the Recovery Officer, was only dealing with the implementation of the award as granted by the ld. Single Judge on 17th April, 2012, and was not adjudicating the question as to whether the Workman was entitled to MACP/ACP benefits.

<u>Conclusions</u>

42. Clearly, therefore, in the background as set out above, the MACP/ACP benefits could not have been directly held to be money due to the Workman, especially in the light of the following factors:

i) The Workman had sought continuity of service and consequential benefits in the statement of claim but not in the writ petition. In any

case, the Court had merely granted reinstatement with only 50% of back wages and no other relief;

ii) The judgment in ***Deepali Gundu (supra)*** clearly lays down in paragraph 33.1 and 33.2 that reinstatement with continuity of service and back wages is the normal rule but the Court awarding the back wages can exercise its discretion by considering the length of service of the Workman. By applying this rule, the ld. Single Judge in the order dated 17th April, 2012 had only granted 50% back wages;

iii) In ***Mahabir Prasad (supra)***, as per the award, the workman was granted reinstatement with 'continuity of service' but without back wages. In ***Jagdish Chander (supra),*** the management had assured the Court that it would provide continuity of service and pensionary benefits and then refused the same later. Since 'continuity of service' was granted in these cases in the awards under challenge, the facts are distinguishable from the present case;

iv) In any event, as per the Management's policies, various conditions have to be satisfied for grant of MACP/ACP benefits, including a trade test which has to be passed. Thus, these benefits could not have been granted as a matter of right, without the workman having undergone the said test/satisfied the prescribed criteria;

v) The RLC could not have gone into such complex issues while passing the impugned orders under Section 33C(1) of the ID Act, as the jurisdiction of the RLC is limited to awarding 'amounts due'. The ACP/MACP benefits would not constitute 'amounts due' in the facts and circumstances of the present case, especially in view of the

order of the ld. Single Judge dated 17th April, 2012.

43. For the above-mentioned reasons, the impugned recovery certificates and attachment orders are not sustainable and the same are accordingly set aside.

44. However, in view of the protracted litigation, litigation expenses of Rs.50,000/- shall be paid by the Management to the Workman, within a period of two weeks, directly into the Workman's bank account. Details of the bank account of the Workman be furnished by the ld. Counsel for the Workman to the ld. Counsel for the Management.

45. The writ petition is allowed in these terms. All pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

MARCH 15, 2022
Rahul/MS