

R/SPECIAL CIVIL APPLICATION NO. 7721 of 2018**FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE A.Y. KOGJE**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

SADBHAV ENGINEERING LIMITED
Versus
GHANSHYAMBHAI B PANDYA & 1 other(s)

Appearance:

MRS YOGINI V PARIKH(2163) for the Petitioner(s) No. 1

MR JV JAPEE(358) for the Respondent(s) No. 1

NOTICE SERVED BY DS for the Respondent(s) No. 2

CORAM:HONOURABLE MR. JUSTICE A.Y. KOGJE**Date : 07/06/2022****ORAL JUDGMENT**

[1] This petition under Article 226 of the Constitution of India is filed by the petitioner, challenging the order dated 10.11.2017 by the Labour Court, Ahmedabad in Recovery Application No.244 of 2013 made in connection with Reference (LCA) No.834 of 1996, whereby the Labour Court had ordered paying of full wages for a period from 01.04.2006 to 30.03.2013.

[2] It is the case where the petitioner had made a Reference (LCA) No.834 of 1996 against the illegal termination which came to be allowed by the Labour Court by award dated 28.02.2006 by

which the respondent-workman was ordered to be reinstated with 25% back-wages.

[3] Learned advocate Mrs. Yogini Parikh appearing for the petitioner submitted that pursuant to the order passed by the Labour Court, Recovery Application No.814 of 2006 came to be filed by the respondent-workman and under that the Labour Court had passed an order for paying Rs.97,500/- towards 25% back-wages and reinstatement which the petitioner has duly complied with and called upon the respondent-workman to join the duty at its plant at Orissa. However, the respondent-workman did not join and after almost a period of seven years, filed the present recovery application on 01.05.2013 claiming the salary of the entire period as if the respondent-workman has reported on duty and has performed his duty. Learned advocate for the petitioner submitted that the Labour Court has committed jurisdictional error in entering into adjudicatory process in an application which was filed under Section 33C(2) of the Industrial Disputes Act, 1947 (for short "the Act"), which is a provision exclusively for the purpose of execution of the award. In the instant case, where the respondent-workman has filed an application for recovery claiming the salary on the basis that he had approached the petitioner company at Orissa, but was not permitted to resume the duty, is a disputed question which requires adjudication by making a reference, however no such procedure has been followed and as if the say of the respondent-workman is a gospel truth, the impugned order has been passed. Learned advocate for the petitioner drew attention of this Court to the relevant submissions made by the petitioner in its written reply, contesting the version of the respondent workman that the workman had traveled to Orissa for joining his duty and was not permitted to. Despite this disputed question, the Labour Court has proceeded to pass the impugned order, directing issuance of

recovery certificate for an amount equivalent to the salary for the period between 2006 to 2013 as if the petitioner has performed its duty.

[3.1] Learned advocate has placed reliance upon decision in the case of **M/s. Bombay Chemical Industries v/s. Deputy Labour Commissioner and Another**, reported in **2022 LiveLaw (SC) 130**.

[4] Learned advocate Mr. J.V.Japee appearing for the respondent No.1 submitted that the Labour Court while considering the application under Section 33 of the Act has given opportunity to the petitioner-company to prove its case regarding the averment of respondent-workman in his application of having made an attempt to re-join duty at Orissa, but was prevented from doing so. It is submitted that even during the course of deposition, the workman has clearly deposed alongwith necessary documents to substantiate his claim about his traveling to Orissa in the form of railway ticket, hotel bills and telephone call bills, whereas on the other hand the petitioner has not produced any evidence to falsify the case of the respondent-workman and therefore, the Labour Court was justified in passing the order.

[4.1] Learned advocate submitted that the fact that the respondent-workman was ordered to join at Orissa reflects the intention of the petitioner company in not executing the award passed in favour and has merely made a show, however, the respondent-workman did make attempt to rejoin the service by traveling to Orissa, but was prevented.

[5] Heard learned advocates for the parties and perused the documents placed on record. The facts of the case would indicate that the respondent-workman was engaged as a workman in the

petitioner company and against termination of the respondent, Reference (LCA) No.834 of 1996 was filed by the workman which came to be decided under the award dated 28.02.2006 by which the Labour Court, Ahmedabad was pleased to direct reinstatement with 25% back-wages from the period between 12.03.1996 to 28.02.2006. It appears that after the decision in the recovery application No.814 of 2006 for executing the Labour Court award dated 28.02.2006, a recovery application was ordered for an amount of Rs.97,500/- towards 25% back-wages and in so far as the reinstatement is concerned, the respondent-workman was ordered to join service at plant Jarkha site in the State of Orissa.

[6] It is the case of the petitioner that the respondent-workman did not join at Jarkha site at Orissa and instead filed recovery application No.244 of 2013 on 01.05.2013 praying for dues of Rs.4,12,101/- with 12% interest and the cost of Rs.5,000/-. The cause for the respondent-workman to file application was to receive monthly salary from 01.04.2006 to 30.03.2013 during which the respondent-workman could have worked with the the petitioner company and the petitioner company allowing the respondent-workman to join the duty. From the record, it appears that in support of the application, respondent-workman has produced travel ticket, hotel bills etc. which on the record of the recovery application, whereas the petitioner company on whose behalf oral deposition was made has denied that the respondent had reported to Jarkha site at Orissa. In the opinion of the Court, when the issue with regards to whether the workman had reported at Jarkha site at Orissa is disputed, the entire issue goes out of the periphery of Section 33 of the Act and is a case of potential dispute for which reference will have to be undertaken to adjudicate. Section 33C of the Act which is provision under the Industrial Disputes Act, for the purpose of execution of the award or dealing with the pre-existing

right or benefit arising out of the settlement of a workman against his employer and is therefore, for the purpose of execution only. In the present case, the Labour Court has entered into an adjudicatory process giving a finding to the effect that the respondent-workman was not allowed to join his duties at Jarkha site in Orissa and therefore, declining entitlement of the respondent-workman to receive full wages. This in the opinion of the Court is not a purpose of Section 33C of the Act. The Apex Court in case of **M/s. Bombay Chemical Industries (Supra)** has held in para-6 as under:-

“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 proposition 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 33-C (2) of the ID Act is necessarily a pre-existing benefit or one flowing from a preexisting 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.

[7] It is also noted by this Court that in so far as the award is concerned, the same stands executed when the petitioner has paid 25% back-wages and had ordered reinstatement directing the respondent-workman to report on duty and thereafter, there was no cause of action for invoking provisions of Section 33C(2) of the Act as is prayed for in the application by the respondent-workman for salary/wages and the period after the award in the reference without there being any separate reference with regard to the dispute sought to be raised by the respondent-workman.

[8] In view of the aforesaid, the impugned order dated 10.11.2017 passed by the Labour Court, Ahmedabad in Recovery Application No.244 of 2013 made in connection with Reference (LCA) No.834 of 1996 is beyond the jurisdiction of the Labour Court, exercising powers under Section 33C(2) of the Act and is required to be quashed and set aside. The same accordingly quashed and set aside. Hence, the petition stands **allowed**. Rule is made absolute to the aforesaid extent. No order as to costs.

(A.Y. KOGJE, J)

SIDDHARTH