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

% Reserved on : 07th December, 2023
Pronounced on : 21st December, 2023

\+ **W.P.(C) 14183/2023 & CM APPL. 56131/2023.**

MUNICIPAL CORPORATION OF DELHI ..... Petitioner

versus

SH. KULWANT SINGH ..... Respondent

\+ **W.P.(C) 14184/2023 & CM APPL. 56133/2023.**

MUNICIPAL CORPORATION OF DELHI ..... Petitioner

versus

SH. MAHIPAL ..... Respondent

\+ **W.P.(C) 14185/2023 & CM APPL. 56135/2023.**

MUNICIPAL CORPORATION OF DELHI ..... Petitioner

versus

SH. RAKESH MANN ..... Respondent

\+ **W.P.(C) 14213/2023 & CM APPL. 56275/2023.**

MUNICIPAL CORPORATION OF DELHI ..... Petitioner

versus

SHRI SANDEEP KHURANA ..... Respondent

\+ **W.P.(C) 14480/2023 & CM APPL. 57550/2023.**

MUNICIPAL CORPORATION OF DELHI ..... Petitioner

Signature Not Verified
Digitally Signed
By:MANISH KUMAR
Signing Date:22.12.2023
16:25:24

versus

SMT. REKHA VASHISHTH ..... Respondent

\+ **W.P.(C) 14483/2023 & CM APPL. 57551/2023.**

MUNICIPAL CORPORATION OF DELHI ..... Petitioner

versus

SHRI MAHESH KUMAR ..... Respondent

\+ **W.P.(C) 14544/2023 & CM APPL. 57639/2023.**

MUNICIPAL CORPORATION OF DELHI ..... Petitioner

versus

SH. AMAN SEHRAWAT ..... Respondent

\+ **W.P.(C) 14545/2023 & CM APPL. 57641/2023.**

MUNICIPAL CORPORATION OF DELHI ..... Petitioner

versus

SMT. MANEESHA JUNEJA ..... Respondent

\+ **W.P.(C) 14578/2023 & CM APPL. 57925/2023.**

MUNICIPAL CORPORATION OF DELHI ..... Petitioner

versus

SH. HARISH RAM ARYA ..... Respondent

Signature Not Verified
Digitally Signed
By:MANISH KUMAR
Signing Date:22.12.2023
16:25:24

Presence: Mr. Sanjeev Sagar, Standing Counsel for MCD with Ms. Nazia Parveen, Advocate for all the petitioners.

Mr. Jawahar Raja, Ms. Meghna De, Ms. L. Gangmei and Ms. Aditi, Advocates for all the respondents.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. The Municipal Corporation of Delhi ("**the petitioner/MCD**") has filed the present batch of petitions against similarly placed workmen who are employed as Senior Pharmacists ("**the respondent(s)**") with them. The facts in these petitions, as well as the questions of law arising from them, are identical. For the sake of convenience, therefore, this Court will refer to facts as provided in W.P. (C) No. 14483 of 2023 titled '***Municipal Corporation of Delhi vs. Shri Mahesh Kumar***'.

2. The petition assails order dated 28.02.2023 passed by the Central Government Industrial Tribunal Cum Labour Court, Delhi-01 ("**Labour Court**") in LCA No. 527/2019 ("**the impugned order**") whereby the respondent/workman's application under Section 33C(2) of the Industrial Disputes Act, 1947 ("**the Act**") was allowed.

Factual Background

3. The respondent joined MCD as a pharmacist on 10.08.1994. While approving the report of the Sixth Pay Commission, the Central Government referred the issue of demands raised regarding pay scales of

Signature Not Verified
Digitally Signed
By:MANISH KUMAR
Signing Date:22.12.2023
16:25:24

certain common category of posts, including the post of a pharmacist, to a Fast Track Committee ("**the Committee**"). The Committee recommended that entry grade pharmacists employed by the Central Government should remain at the pay grade of Rs. 2800 in the pay band of PB-1. It further recommended that on completion of two years' service in the entry grade, all incumbents be granted non-functional upgradation to the next higher grade pay of Rs. 4200 in the pay band PB-2.

4. The Committee's recommendations were accepted by the Ministry of Finance, Department of Expenditure, Implementation Cell on 18.11.2009 *vide* Office Memorandum F.No.1/1/2008-IC ("**Central Government Office Memorandum**"). *Vide* endorsement dated 23.12.2010 ("**the endorsement**") Finance Department, Government of National Capital Territory of Delhi ("**GNCTD**") also endorsed the Central Government Office Memorandum. Subsequently, on 01.06.2011, the Directorate of Health Services, GNCTD clarified that the pay grade in which the Assured Career Progression ("**ACP**")/ Modified Assured Career Progression ("**MACP**") scheme is to be granted to pharmacists shall be effective from 01.01.2006 ("**the clarification**").

5. Relying on the said endorsement by GNCTD, read with Regulation 4(1) of the Delhi Municipal Corporation Service Regulations, 1959 ("**DMC Regulations**"), the respondent filed an application under Section 33C(2) of the Act before the Labour Court claiming an amount of Rs. 3,91,878/- as arrears for the period from 01.01.2006 to 31.12.2022 along with 18% interest (the initial claim of Rs. 5,00,000/- was revised by the respondent).

Signature Not Verified
Digitally Signed
By:MANISH KUMAR
Signing Date:22.12.2023
16:25:24

6. *Vide* the impugned order, the Labour Court allowed the respondent's revised claim of Rs. 3,91,878/- along with interest applicable at the relevant time on the full amount from the date of the impugned order till realization. In some of the petitions (namely, W.P. (C) 14183/2023, W.P. (C) 14184/2023, W.P. (C) 14185/2023, W.P. (C) 14213/2023, W.P. (C) 14880/2023), W.P. (C) 14544/2023), the Labour Court granted an interest of 6% per annum on the awarded amount from 01.01.2016 till the date of realization of the said amount.

Submissions on behalf of the Petitioner

7. Petitioner's counsel, assails the impugned order on, *inter alia*, the following grounds:

7.1. MCD never recognized the respondents' or any other pharmacist's claim for grant of ACP/MACP on the basis of recommendation made by GNCTD or the Central Government. The respondent has failed to provide any document suggesting grant of approval and no evidence was led in this regard before the Labour Court. Therefore, no pre-existing right vests in the respondents as the demanded pay scale has never been granted to any pharmacist employed by MCD. The Labour Court could not have allowed the Section 33C(2) application on the basis of an undetermined claim.

7.2. Section 33C(2) of the Act refers to a situation where a worker claims an amount which is capable of computation, i.e. originates from a benefit which the employer admits the worker is entitled to; the Labour Court does not have the jurisdiction to determine the issue of eligibility under the provision. Reliance in this regard was

Signature Not Verified
Digitally Signed
By:MANISH KUMAR
Signing Date:22.12.2023
16:25:24

placed on the Hon'ble Supreme Court's decision in ***Central Inland Water Transport Corporation Limited vs. Workmen***, (1974) 4 SCC 696, which was later relied on in ***Municipal Corporation of Delhi vs. Ganesh Razak and Anr.***, (1995) 1 SCC 235.

Several other decisions were also relied upon in this regard, namely, ***State Bank of India vs. Ram Chandra Dubey and Ors***., (2001) 1 SCC *73*; ***Bombay Chemical Industries vs. Deputy Labour Commissioner & Anr***., (2022) 5 SCC 629; ***State of UP vs. Brijlal Singh*** (2005) 8 SCC 58*;* ***D. Krishnan and Ors. vs. Special Officer, Vellore Co-operative Sugar Mill and Ors***., (2008) 7 SCC 22*;* ***Heavy Alloy Penetrator Project vs. CGIT,*** Gujarat High Court, Writ Appeal No. 1053/2019*;* ***Union Bank of India vs. Kishan Chand Saini,*** 2018 SCC OnLine Del 9393; and ***Cloth Merchant Association vs. Sri Laxmi Prasad Namdeo***, Misc. Petition No. 2572 of 2019, Madhya Pradesh High Court.

7.3. Issues like grant of pay scale entitlement of ACP/MACP are outside the scope of Section 33C(2) of the Act, and cannot be adjudicated by the Labour Court. Such entitlement, if refused, can only be examined in a reference under Section 10 of the Act.

7.4. The revised pay scales are not automatically implemented, and a set procedure is to be followed for implementation. A draft proposal in this regard was submitted by MCD, and is pending before a committee of the Corporation. The report of the said committee will first be sent to the Finance Department, followed

Signature Not Verified
Digitally Signed
By:MANISH KUMAR
Signing Date:22.12.2023
16:25:24

by the Commissioner of MCD, and finally the House of Corporation for approval and implementation.

7.5. The respondents never issued a notice of claim prior to filing an application under Section 33C(2) of the Act, and the petitioner, therefore, never had an opportunity to examine this issue and communicate its view to the respondents.

7.6. In any case, the issue should be adjudicated under the Delhi Municipal Corporation Act, 1957, which has its own procedure, and rules to fix emoluments for workers.

7.7. Lastly, the petitioner's counsel contends that proceedings under Section 33C(2) of the Act are akin to execution proceedings, therefore, the Labour Court could not have granted any interest on the awarded amount. Reliance in this regard was placed on several decisions, namely, ***Indraprastha Power Generation Company Ltd. vs. Ishwari Devi***, 2007 SCC OnLine Del 1494; ***King Airways vs. Raghavendra Bajaj***, 2013 SCC OnLine Del 577; ***Krishnamurthi and Ors. vs. "Mall" and Ors.***, 1963 SCC OnLine Mad 460; ***State of Punjab vs. Harvinder Singh***, (2008) 3 SCC 394; ***Bhim Singh Bajeli vs. P.O Central Govt. Industrial Tribunal***, 2013 SCC OnLine Del 338.

Submissions on behalf of the Respondent

8. In contrast, the respondent's counsel made, *inter alia*, the following submissions:

Signature Not Verified
Digitally Signed
By:MANISH KUMAR
Signing Date:22.12.2023
16:25:24

8.1 The respondents, as Senior Pharmacists, are entitled to revised wages w.e.f. 01.06.2006 as per the Central Government Office Memorandum, the endorsement, and the clarification issued by GNCTD on 01.06.2011.

8.2 The revised wages have been implemented by the Office of the Medical Superintendent, Dr Baba Saheb Ambedkar Hospital, Sector 6, Rohini, Delhi -110085, as well as Bhagwan Mahavir Hospital, Pitam Pura, Delhi -110034 who have both revised the pay scales of pharmacists working with them in accordance with the endorsement issued by GNCTD.

8.3 In its Status Report filed before the Labour Court, MCD did not deny contentions raised by the respondents, and only stated that the respondents' claim is "*pending for approval from authority*". Therefore, the petitioner admits the respondent's claim.

8.4 Placing reliance on ***Jeet Lal Sharma vs. Presiding Officer, Labour Court IV and Anr.,*** 2000 SCC OnLine Del 227, wherein several decisions of the Hon'ble Supreme Court have been considered by a Coordinate Bench of this Court, it is contended that an application under Section 33C(2) of the Act is maintainable if an entitlement as per service conditions exists in favour of the workman. (Several other decisions have also been relied upon including ***Union of India vs. Presiding Officer, Central Government, Labour Court and Ors***., 35 (1988) DLT 395 and; ***Fabril Gasosa vs. Labour Commissioner & Ors***. (1997) 3 SCC 150).

Signature Not Verified
Digitally Signed
By:MANISH KUMAR
Signing Date:22.12.2023
16:25:24

8.5 Sections 33C(1) and 33C(2) of the Act are different in their scope and ambit inasmuch as while the former deals with recovery of "money due" to a workman, the latter deals with "a benefit" computable in terms of money and such benefit can be reckoned in terms of money. Reliance in this regard was particularly placed on the Hon'ble Supreme Court's decision in ***Kays Construction Company (Pvt.) Ltd. vs. State of Uttar Pradesh and Ors.***, (1965) 2 SCR 276 and ***Central Bank of India vs. P.S. Rajagopalan etc***., (1963) II LLJ 89 SC.

8.6 On the issue of grant of interest by the Labour Court in an application under Section 33C(2) of the Act, it was contended that such power vests in the Labour Court, as also the High Court under Article 226 of the Constitution of India, 1950. Reliance in this regard was placed on the following decisions: ***Prabhavati Ramgarib B. vs. Divisional Railway Manager***, 2010 SCC OnLine Bom 171; ***Dushyant N. Dayal and Ors. vs. Securities and Exchange Board of India***, (2017) 9 SCC 660; ***Prabhakar Kisan Magar and Ors. vs. The Divisional Railway Manager, Western Railways***, MANU/MH/2120/2022; ***Raju vs. M/s Sadiq and Co., Engineers & Builders Constructions Pvt. Ltd***., Writ Petition No. 1446/2019 dated 04.09.2019*;* ***Municipal Corporation, Faridabad vs. Ld. Presiding Officer, Industrial Tribunal-Cum-Labour Court-I, Faridabad, and Anr***., 2018 SCC OnLine P&H 7953; and ***Naaz Cinema vs. Vasantben Rameshbhai Ghumadiya,*** 2011 SCC OnLine Guj 3491.

Signature Not Verified
Digitally Signed
By:MANISH KUMAR
Signing Date:22.12.2023
16:25:24

Analysis and Conclusion

9. Heard counsel for the parties, and examined the law and the material placed on record.

10. This Court is confronted with two fundamental questions – *firstly*, whether respondents' application under Section 33C(2) of the Act could have been allowed by the Labour Court (which begs the question of whether any entitlement or benefit in favour of the respondent existed prior to the application being filed); and *secondly*, whether the Labour Court could have awarded any interest on the awarded amount in a proceeding under Section 33C(2) of the Act.

11. The gamut of arguments made before this Court largely hinge on the interpretation of Section 33C(2) of the Act. Therefore, it is apposite to note the cardinal principles enunciated by the Hon'ble Supreme Court as well as other Courts on the scope of Section 33C(2) of the Act. The said provision is extracted below:

> *"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 3[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*

Signature Not Verified
Digitally Signed
By:MANISH KUMAR
Signing Date:22.12.2023
16:25:24

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; 4[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.]

(3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the commissioner and other circumstances of the case.

(4) The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be

Signature Not Verified
Digitally Signed
By:MANISH KUMAR
Signing Date:22.12.2023
16:25:24

recovered in the manner provided for in sub-section (1).

(5) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen.

Explanation.--In this section Labour Court includes any court constituted under any law relating to investigation and settlement of industrial disputes in force in any State."

(emphasis supplied)

12. The question before this Court is whether the respondents are entitled to seek recovery of money from the petitioner under Section 33C(2) of the Act on the basis of a benefit (pay scale entitlement of ACP/MACP) that has purportedly already accrued to them, as a matter of right, but has not been implemented by the petitioner. There is no doubt that the said provision relates to recovery of money due from an employer. The present dispute pertains to the legal basis of such entitlement for an application to be allowed under Section 33C(2) of the Act.

13. Under Section 33C(2) of the Act, an entitlement is crystallised by virtue of an adjudication, settlement, or even service conditions governing a post; a purported entitlement may also only be a demand yet to be precipitated by an adjudicatory or conciliatory process. If it is the latter, the recovery process cannot be triggered, since a conclusive determination is a *sine qua non* for the initiation of the recovery process. It is in the interstices of this provision that arguments have been addressed.

Signature Not Verified
Digitally Signed
By:MANISH KUMAR
Signing Date:22.12.2023
16:25:24

14. On one hand, respondent's counsel contended that any adjudication or settlement is unnecessary in the present case, since the entitlement stems from the operation of law (i.e. a combined reading of the Central Government Office Memorandum, the endorsement issued by GNCTD, the subsequent clarification, and Regulation 4(1) of the DMC Regulations). On the other hand, petitioner's counsel submitted that in the absence of any approval or recognition by MCD for grant of pay scale entitlement of ACP/MACP, no right vests in the respondent, and therefore, an application under Section 33C(2) of the Act could not have been allowed by the Labour Court.

15. Two decisions often cited in disputes pertaining to the scope and ambit of Section 33C(2) of the Act are ***Ganesh Razak*** *(supra)* and ***Jeet Lal Sharma*** *(supra)*. In 1995, the Hon'ble Supreme Court made the following pertinent observation on the scope of Section 33C(2) in ***Ganesh Razak*** (*supra)*:

> *"12. The High Court has referred to some of these decisions but missed the true import thereof. The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33-C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and*

Signature Not Verified
Digitally Signed
By:MANISH KUMAR
Signing Date:22.12.2023
16:25:24

> *thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33-C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution.*
>
> (emphasis supplied)

16. Reliance on the above decision is usually placed by the management to restrict the scope of Section 33C(2) of the Act to cases which emanate from an adjudication or the recognition of an entitlement by the employer. MCD's counsel underscores the importance of *"recognition"*. Recognition, as per him, requires a positive act of approval and cannot be inferred from mere omission to decide. A positive act of approval could be in the form of a notification, circular or official communication approving the implementation of these schemes and, therefore, grant of pay scale entitlement of ACP/MACP to pharmacists working with them.

17. Reliance was also placed on ***State Bank of India v. Ram Chandra Dubey*** (*supra*) to contend that a proceeding under Section 33C(2) of the Act necessitates a pre-existing benefit flowing from a pre-existing right. This pre-existing benefit is different from a claim to a right simply on the basis of it being fair and just.

18. However, the second decision which assumed prominence is the 2000 decision in ***Jeet Lal Sharma*** (*supra*) by this Court. In ***Jeet Lal Sharma*** *(supra)*, pertinent observations on the ambit and scope of powers of the Labour Court under Section 33C(2) of the Act were made. This Court analysed prior decisions of the Hon'ble Supreme Court, *inter alia*,

Signature Not Verified
Digitally Signed
By:MANISH KUMAR
Signing Date:22.12.2023
16:25:24

in ***Ganesh Razak*** (*supra*) and ***Central Bank of India*** *(supra)* and concluded that the ratio in ***Ganesh Razak*** (*supra*) cannot be understood in a narrow sense. The Court referred to the decision in ***Ganesh Razak*** (*supra*) which had emphasised on the entitlement having fructified by either an earlier adjudication or as being "recognised by the employer" and held that, recognition by an employer does not necessarily have to be in the form of a "settlement". The recognition can also be "as per service conditions". It would be instructive to refer to the following extracts from ***Jeet Lal Sharma*** (*supra*) in this regard:

> *"11. The Labour Court in the impugned order has understood the ratio of the judgment in the case of Ganesh Razak [1995 (1) L.L.N. 402] (vide supra), in a narrow sense. The Supreme Court has held that the workman shall be entitled to receive money if there is pre-existing right and this entitlement or pre-existing right is found in twin expressions:*
>
> *(i) entitlement has been earlier adjudicated upon; or*
>
> *(ii) entitlement is recognised by the employer.*
>
> *The Labour Court in the impugned order while rejecting the application of the petitioner herein as not maintainable had observed that there is no claim of petitioner that there is any prior adjudication or settlement as regards entitlement. Thus the entitlement as recognised by the employer is taken in the form of "settlement". This is not so. There can be recognition of the entitlement by the employer not only in the form of "settlement" but as per service conditions also. Thus understanding the expression "recognised by the employer" only when there is settlement is clearly erroneous. A person may be entitled to receive money and there may be pre-existing right even in the absence of*

Signature Not Verified
Digitally Signed
By:MANISH KUMAR
Signing Date:22.12.2023
16:25:24

settlement (here "settlement" is understood as defined under S. 2(p) of the Industrial Disputes Act, 1947) but when such right is recognised as per service conditions.

12. When the claim is based on adjudication or settlement it poses no difficulty. However there may be cases where the workman would be held entitled to receive the money as pre-existing right on the basis of the agreement between the employer and employee or as per established service conditions which have culminated into right in favour of the workman. Take for example, when a workman, is not paid his wages for a particular period, he shall be entitled to file application under S. 33-C(2) of the Act claiming wages for that period as he is entitled to receive the same at the rate agreed upon and at which the employer has been paying to him in the past. There is no adjudication or settlement out he is entitled to receive the wages of the period in dispute. This is as per the terms of the employment. Likewise, in a case where the workman is getting the wages in a graded pay scale, he has a right to receive increment every year. But if for a particular year increment is not released by the employer, workman shall be entitled to file application under S. 33-C(2) claiming the said increment as he has pre-existing right and he is entitled to receive such increment which can be stopped only by way of punishment as a result of departmental enquiry or when the workman is not allowed to cross the efficiency bar. Same may be the position in respect of the payment of minimum bonus. Or, where the workman claims overtime wages and the employer does not deny the right to it but only denies the claim on the ground that workman had not worked overtime. In such cases the Labour Court will have the jurisdiction to decide the claim Chandra

Signature Not Verified
Digitally Signed
By:MANISH KUMAR
Signing Date:22.12.2023
16:25:24

Extrusion Products, Lucknow v. Miss Kishore Tripathi reported in 1986 (2) L.L.N. 102.

13. On the other hand, if entitlement to receive money is in dispute, application under S. 33-C(2) will not be maintainable and the appropriate course would be to seek reference under S. 10 of the Act. In Ganesh Razak (vide supra) the workman were being paid on daily-rate basis and they claim same pay as paid to regular employees on the principle of equal pay for equal work. It was necessary to first decide as to whether they were entitled to such a claim or not and therefore in the absence of such adjudication it could not be said that they were entitled to receive the same pay as paid to regular employees. As per existing terms they were only paid on daily-rate basis. However, once such a right is adjudicated upon for subsequent proceedings thereafter, application could be filed under S. 33-C(2) of the Act, see Director-General (Works) CPWD v. Ashok Kumar reported in 2000 (2) L.L.N. 65. Similarly, if a person is suspended and he is not paid subsistence allowance, say at 50 per cent of the wages as per the service conditions, he can file application under S. 33-C(2) of the Act, claiming subsistence allowance at 50 per cent as he is entitled to receive this money as per service conditions and this right is recognised by the employer as per service rules. On the other hand if workman claims that suspension is illegal and he is entitled to hundred per cent wages during the period of suspension then such a claim would not be maintainable in an application under S. 33-C(2) of the Act as, there has to be first an adjudication as to whether suspension is legal or illegal before deciding the entitlement of the workman to receive hundred percent wages during the period of suspension. In such cases, instead of filing an application under S. 33-C(2), workman will have to raise industrial

Signature Not Verified
Digitally Signed
By:MANISH KUMAR
Signing Date:22.12.2023
16:25:24

dispute by seeking reference under S. 10 of the Act challenging the suspension. Therefore, in order to come within the purview of this section, a workman must be entitled to receive from the employer some "money" or "benefit." This entitlement may depend upon an adjudication of the right or may depend upon interpretation of certain existing rights. If this entitlement depends upon an adjudication of the right for the first time, then the adjudication cannot come within the purview of this sub-section. The adjudication may also be dependent on interpretation or construction of certain terms on which two reasonable views are possible. If, on the other hand, the right is patently there but it has to be found out by reading of any document, settlement or award, that could be done within the purview of this sub-section. For instance, where the workman claims what ought to be the relation between him and his employer, remedy does not lie under this provisions. Likewise, the question of classification of the workmen cannot be decided by the Labour Court under this section. Such a question can be adjudicated on a reference by an Industrial Tribunal under S. 10(1).

14. The point which is emphasised is that entitlement to receive money, i.e., pre-existing right can be based on—

(1) adjudication;

(2) settlement;

(3) service conditions.

If the right to get a particular benefit is there, the application under S. 33-C(2) would be maintainable and jurisdiction of Labour Court will not be barred merely because employer has denied the same.

Signature Not Verified
Digitally Signed
By:MANISH KUMAR
Signing Date:22.12.2023
16:25:24

> *15. What is the meaning of the expression "entitlement to receive. No doubt it is referable to pre-existing right. However where the workman claims a benefit flowing from a pre-existing right and approaches the Labour Court under S. 33-C(2) for computation of the" right in terms of money and the employer disputes the existence of the right, the Labour Court will have the jurisdiction to determine the question, whether the right exists and if the existence of right is established then to proceed to compute the benefit flowing therefrom in terms of money or on its decisions recovery proceedings can start (New Taj Mahal Cafe private Ltd. v. Labour Court reported in 1970 (21) F.L.R. 199 and East India Coal Company, Ltd. (vide supra). In deciding the maintainability of the application under S. 33-C(2) what is to be looked at is the claims set up in the application and not what the other side contends in its reply. The fact that the employer by his plea raises some dispute, does not mean that jurisdiction of Labour Court to deal with the question is taken away."*
>
> (emphasis supplied)

19. Heavy reliance was, therefore, placed by the counsel for the workmen on the interpretation laid down by this Court in ***Jeet Lal Sharma*** (*supra*) to contend that when an entitlement arises out of established service conditions, neither would the question of adjudication arise, nor would there be a question of requirement of any positive action by the employer to recognise it. It is relevant to add that no appeal challenging the above decision has been filed, and therefore, it has attained finality.

20. This Court finds merit in the submission made by the respondent's counsel and the interpretation laid down in ***Jeet Lal Sharma*** (*supra*). A service condition, if so conspicuously evident, may render the need for a

Signature Not Verified
Digitally Signed
By:MANISH KUMAR
Signing Date:22.12.2023
16:25:24

formal notification or communication from the employer superfluous and introduce uncertainty to the situation. The requirement of 'recognition' from the employer, despite an established service condition, could result in a workman tirelessly trying to claim his right, while the employer, out of tardiness or pure *mala fide,* may not issue any formal communication to recognize such service condition and right. Lack of such recognition would give, if the petitioner's contention is accepted, an open mandate to the management-employer to deny what otherwise legitimately accrues to the benefit of the employee by operation of law.

21. The workman cannot be kept in animated suspension for an indefinite period of time, awaiting the issuance of a formal notification by the management, despite a clear entitlement in his favour. Needless to state, a traditional conflict between the workman-employee and the management-employer is a fundamental aspect of labour jurisprudence, therefore, to postpone the precipitation of an entitlement to an indeterminate date awaiting a bureaucratic confirmation/recognition by the employer, would give unnecessary and unreasonable leverage to the management.

22. Furthermore, in 1988 Division Bench of this Court in ***Union of India v. Presiding Officer, Central Government, Labour Court*** (*supra*) observed that *"it is now well settled that Section 33C(2) of the ID Act, the Labour Court can decide incidental matters".* Respondent's counsel also placed reliance on the decision of the Supreme Court in ***Central Bank of India v. P.S. Rajagopalan*** *(supra)* wherein Justice Gajendragadkar was of the view that words of limitation found in Section 33C(1) were not

Signature Not Verified
Digitally Signed
By:MANISH KUMAR
Signing Date:22.12.2023
16:25:24

found in Section 33C(2) and to that extent, the scope of the latter was *"undoubtedly wider than that of Section 33C(1)".*

23. Therefore, the question which arises is whether there is an entitlement in favour of the workers by an operation of law. In this regard, the following needs to be adverted to:

(i) The Central Government, while approving the report of the Sixth Central Pay Commission, referred the matter regarding demands of pay scales to the Committee. The post of Pharmacists was included in the above reference.

(ii) The Committee recommended that entry grade of Pharmacists in Central Government should remain at Grade Pay of Rs.2800/- in pay band of PB-I and, on completion of two years, incumbent pharmacists should be granted non-functional upgradation to the next higher grade pay of Rs.4,200/- in pay band of PB-II.

(iii) The Committee's recommendation was accepted by the Ministry of Finance, Department of Expenditure, Government of India *vide* the Central Government Office Memorandum, and was further endorsed by the GNCTD.

(iv) GNCTD also issued a clarification dated 01.06.2011 regarding revised pay structure for common category posts of Pharmacists clarifying that ACP/MACP scheme is to be granted to Pharmacists w.e.f. 01.01.2006.

(v) In pursuance of the above, the pay of Pharmacists working for GNCTD was refixed. Hospitals such as Doctor Baba Saheb

Signature Not Verified
Digitally Signed
By:MANISH KUMAR
Signing Date:22.12.2023
16:25:24

Ambedkar Hospital and Bhagwan Mahavir Hospital, which are operating under GNCTD, also implemented the revised pay.

24. The respondents strongly rely upon Regulation 4(1) of the DMC Regulations claiming that rules applicable to Government Service in Central Government would regulate conditions of service of municipal officers and other municipal employees. Regulation 4(1) of the DMC Regulations is extracted below for reference:

> *"4. Conditions of service of municipal officers and other municipal employees –*
>
> *Unless otherwise provided in the Act or these Regulations, the Rules for the time being in force and applicable in Government servants in the service of the Central Government shall, as far as may be, regulate the conditions of service of municipal officers and other municipal employees except in respect of matters relating to provident funds, subject to the modifications that any reference in the Rules to a Government servant, the Consolidated Fund of India, the Civil Surgeon and the Medical Committee shall be construed as a reference respectively to a municipal officer or other municipal employees, the Municipal Fund, the Municipal Health Officer and Medical Board constituted by the Commissioner."*
>
> (emphasis supplied)

25. A bare perusal of Regulation 4(1) of the DMC Regulations reveals that the conditions of service of municipal officers and other municipal employees except in respect of matters relating to provident funds would be regulated by the rules in force for Government servants in the service of the Central Government.

Signature Not Verified
Digitally Signed
By:MANISH KUMAR
Signing Date:22.12.2023
16:25:24

26. Interestingly, there was no quarrel on the interpretation of this rule. That Regulation 4(1) of the DMC Regulations extended the rules applicable to Central Government employees to municipal officers was not challenged by the petitioner's counsel. The only argument forwarded by the petitioner's counsel in this regard is that no formal communication has been issued by MCD so far in recognition of the benefit that flows from a conjoint reading of the Central Government Office Memorandum, the endorsement issued by GNCTD, the clarification issued by GNCTD, and Regulation 4(1) of DMC Regulations. The present dispute, therefore, comes within the mischief that is sought to be addressed by the decision in ***Jeet Lal Sharma*** (*supra*).

27. Petitioner's counsel submitted that the phrase "*so far as may be*" contained in Regulation 4(1) of the DMC Regulations allows scope for assessment by MCD before service conditions applicable to employees of the Central Government are made applicable to municipal officers and other municipal employees. A Division Bench of this Court in ***Sanjay Kumar Thakur & Ors. v. NDMC***, 2016 SCC OnLine Del, 6170, while adverting to Regulation 4(1) of the DMC Regulations, reiterated as under:

> *"9. As per the said Regulation, unless it is specifically provided in the Municipal Act or in the present Regulations, the Rules in force and applicable to the Government servants in service of the Central Government would regulate the conditions of service of municipal officers and employees with the exception of matters relating to provident fund.*
>
> (emphasis supplied)

Signature Not Verified
Digitally Signed
By:MANISH KUMAR
Signing Date:22.12.2023
16:25:24

28. The Hon'ble Supreme Court in ***Hasmat Ali vs. Amina Bibi and Ors.***, 2021 SCC OnLine SC 1142 at paragraph 12 observed that words such as "so far as may be" or "insofar as" mean 'as much' or 'to the extent' or 'to such extent' as possible. Therefore, in the present petitions, it follows that the phrase "so far as may be" in Regulation 4(1) of DMC Regulations means that the service conditions applicable to government servants in service of the Central Government are *mutatis mutandis* applicable to municipal officers and municipal employees, and need to be implemented to the extent possible.

29. It is relevant to add that MCD never objected to the application filed by the respondents under Section 33C(2) of the Act before the Labour Court. Pursuant to the statement of claim being filed (wherein the respondent has unequivocally invoked the DMC Regulations), the Labour Court issued notice to MCD on 05.04.2019 for filing of the written statement. On 22.07.2019, petitioner was granted further time to file the written statement. On 03.10.2019, the authorised representative for the management appeared but written statement was not filed and more time was requested. On 13.11.2019, MCD was given further time to file a written statement. On 27.02.2020, counsel for MCD yet again prayed for further time to file a written statement, and the Labour Court granted a final opportunity to do the same. Once again, on 04.10.2021, the case was listed for filing of written statement but the petitioner failed to do the same. Finally, on 10.11.2022, the Labour Court noted that no written statement had been filed by the petitioner despite several opportunities, and closed MCD's defence.

Signature Not Verified
Digitally Signed
By:MANISH KUMAR
Signing Date:22.12.2023
16:25:24

30. On 26.05.2022, however, the petitioner had filed a Status Report before the Labour Court (reference is made to Status Report annexed with W.P. (C) 14185/2023). It is relevant to note at this juncture that the said Status Report also reflects that no serious objection had been taken by MCD against the respondents' entitlement under Regulation 4(1) of the DMC Regulations, and the limited objection pertains to the lack of MCD's approval. This Status Report merely contains three short paragraphs, and is produced below in full:

> *"1. That the workman Sh. Rakesh Mann S/o Sh. Khushi Ram has joined Health Department/MCD as Pharmacist on 14.06.1994*
>
> *2. That the above mentioned workman claiming grade pay of Rs 4200 in the pay band PB2 on the recommendation of Sixth Pay Commission.*
>
> *3. That the above mention claim of workman for Revision/refixation of Grade pay as pharmacist is pending for approval from authority."*
>
> (emphasis supplied)

31. This Court finds merit in the respondents' submission that despite their right pertaining to grant of pay scale entitlement of the ACP/MACP scheme purportedly fructifying in 2010 and representations being made pursuant thereto for 11 years, MCD failed to issue any communication recognizing or denying their right to the revised pay. Therefore, the respondents had no alternative but to move the Labour Court under Section 33C (2) of the Act.

32. On a query being put by the Court regarding any further developments, petitioner's counsel submitted that MCD's '*approval*' is still awaited. This Court's attention was drawn to a draft proposal,

Signature Not Verified
Digitally Signed
By:MANISH KUMAR
Signing Date:22.12.2023
16:25:24

submitted as recently as August, 2023, seeking approval of the implementation of the *"6th CPC Fast Track Committee Recommendations for change of Nomenclature of posts of Pharmacist Cadre in MCD"*.

33. Therefore, in light of the discussion above, this Court is of the view that the impugned order is not perverse insofar as it has allowed the respondents' application under Section 33C(2) of the Act on a conjoint reading of the Central Government Office Memorandum, the endorsement issued by GNCTD, the clarification issued by GNCTD, and Regulation 4(1) of DMC Regulations.

Award of Interest

34. Petitioner's counsel also challenged interest awarded by the Labour Court in some of these petitions. It was submitted that proceedings under Section 33C(2) of the Act are in the nature of execution proceedings whereby the workman seeks payment of a determined amount, and therefore, no new benefit could have been granted by the Labour Court. Reliance in this regard was placed on the decision of the Co-ordinate Bench of this Court in ***Indraprastha Power Generation*** *(supra)* where, in paragraph 14, it was held that the Labour Court committed an error in awarding interest to the workmen on arrears/salaries paid as it, in exercise of power under Section 33C(2) of the Act, cannot enlarge the scope of the said provision by arrogating to itself the function of adjudicating the dispute relating to the claim of interest made by the workman.

35. Heavy reliance was also placed on this Court's decision in ***King Airways*** (*supra*) wherein, relying on the decision in ***Union of India vs. The Presiding Officer, Central Government, Labour Court,*** 1984 (2)

Signature Not Verified
Digitally Signed
By:MANISH KUMAR
Signing Date:22.12.2023
16:25:24

AISLJ 567, a Coordinate Bench of this Court held that in a petition under Section 33C(2) of the Act, no new right can be conferred on the workman and no interest can be awarded. The relevant extract from paragraph 18 of the said decision is produced below:

> *"18. As regards W.P. (C) Nos. 7442/2010, 7444/2010 and 7445/2010 it may be noted that the Pilots/workmen herein had specifically prayed for an interest, however no interest has been awarded. A perusal of the order sheets of the Tribunal shows that the Pilots/workmen have faced a protracted litigation wherein several times adjournments were sought by the management to file reply. The management proceeded ex-parte which order was vacated and then further amendments of the pleadings were sought. However, in a petition under Section 33-C(2) ID Act no new right can be conferred on the workman. Thus no interest can be awarded. In Union of India v. The Presiding Officer, Central Government Labour Court, 1984 (2) AISLJ 567 it was held:*
>
> > *"21. Learned counsel for the workman submits that the deputation allowance become due to the workman in 1974 and the same has not been paid as yet. He submits that the petitioner should be directed to pay 12 percent interest from the date the amount became due and payable till realization. He refers to Gammon Indiav. Niranjan Dass, wherein it has been observed that the workman was unlawfully kept out of service and therefore it was just that the employer should pay all arrears with 12 per cent interest. That was a case of retrenchment. The present proceedings are udner Section 33C(2) of the Act. The Jurisdiction of the Labour Court under Section 33C(2) of the Act is only to compute*

Signature Not Verified
Digitally Signed
By:MANISH KUMAR
Signing Date:22.12.2023
16:25:24

the benefit and not to confer any new benefit. I, therefore, do not find any reason to direct payment of any interest in the amount due to the workman on account of deputation allowance.""

(emphasis supplied)

36. Respondents' counsel sought to distinguish the decision in ***King Airways*** *(supra)* from the present batch of petitions on the ground that the Tribunal had refused to grant interest in ***King Airways*** *(supra)*, while the Labour Court has granted interest in some petitions before this Court. Furthermore, it was submitted that ***King Airways*** *(supra)* is not an authority for prohibition to award interest under Section 33C(2) of Act since it does not deal with issues concerning the same and the Court merely passed a direction in the facts of the matter without any assessment of law.

37. Respondent's counsel also sought to distinguish the decision in ***Union of India vs. The Presiding Officer, Central Government, Labour Court*** *(supra)* on the ground that it was only a peremptory rejection of the workman's prayer for interest.

38. Petitioner's counsel additionally placed reliance on paragraphs 7 and 8 of the decision of the Division Bench of this Court in ***Bhim Singh Bajeli*** *(supra)* wherein it was held that it is open for this Court to direct payment of interest in an application under Section 33C(2) of the Act, even if the Tribunal did not have the primary jurisdiction to do so. The relevant paragraph from the said decision is produced below:

"7. As previously mentioned, even though the structure of Section 33C(2) does not confer

Signature Not Verified
Digitally Signed
By:MANISH KUMAR
Signing Date:22.12.2023
16:25:24

jurisdiction to the Labour Court to grant interest, in the facts and circumstances of the case, the fact remains that the employee had approached this Court under Article 226 of the Constitution of India, complaining that his rights had been defeated by nonimplementation of substantive award and subsequent award. At least in these proceedings, it was open for this Court to have directed payment of interest even if it were of the opinion that the Tribunal did not possess the primary jurisdiction to do so. Although the management has relied upon the decision of this Court in Central Government Industrial Tribunal (supra), at the same time, the Court is mindful of certain other decisions of the Bombay High Court in Prabhavati Ramgarib B. v. Divisional Railway Manager, Western Railway Manager2010 (5) SLR 683 (W.P.(C) 5529/2009) and of the Punjab and Haryana High Court in State of Haryana v. Hisam Singh1999 (2) LLJ 335, where the Court relied on a larger equitable principle, as well as the public interest underlying Section 3 of the Interest Act and drawing analogy from Section, Section 34 of the Civil Procedure Code (CPC), and upheld the jurisdiction of the authority under Section 33C(2), to award interest, having regard to the circumstances.

8. This Court is of the opinion that without entering into the merits or in any manner going into the correctness of the reasoning of the learned Single Judge in Central Government Industrial Tribunal (supra), which was followed in the impugned judgment; at least in the facts of this case, the High Court, in a proceeding under Section 226 of the Constitution of India, could certainly have invoked the substantive and restitutionary jurisdiction, to direct payment of interest. The learned Single Judge, in the impugned order, in paras 12-13 was conscious that the other

Signature Not Verified
Digitally Signed
By:MANISH KUMAR
Signing Date:22.12.2023
16:25:24

Writ Petition No. 78/1998 was also being heard for disposal by the common impugned order. However, in view of the conclusions arrived at by him in respect of the jurisdiction of the Labour Court, the relief was denied in entirety."

(emphasis supplied)

39. It is clear from a reading of the above decision that irrespective of whether the Labour Court has any jurisdiction to grant interest in an application under Section 33C(2) of the Act, this Court, in exercise of its power under Article 226 of the Constitution of India, 1950 can do so on the basis of principles of equity.

40. Respondent's counsel, in turn, placed reliance on the decision by a Coordinate Bench of the Bombay High Court in ***Prabhavati*** (*supra*) whereby it was held that interest can be granted by the Labour Court in an application under Section 33C(2) of the Act. The relevant extract from the said decision is produced below:

"4. Mr. Patil's fifth defence raises a question of law of some importance. The question of law that arises is whether the Labour Court has power under section 33-C(2) to order an employer to pay the employee interest for the period between the date of an order of a Court or Tribunal or authority for payment and the date of payment.

I have answered the question in the affirmative upholding the claim for interest in such cases on four grounds - under sections 3(1)(a) and (b) and 4 of the Interest Act, 1978, and in exercise of powers under Article 226 of the Constitution of India. A view to the contrary would lead to a total miscarriage of justice and disastrous consequences not merely in this matter but for bona-fide and innocent employees in general. It

Signature Not Verified
Digitally Signed
By:MANISH KUMAR
Signing Date:22.12.2023
16:25:24

would put a premium on an employer disregarding orders of Courts, Tribunals and other authorities. Worse still, it would encourage an employer to refuse payments under such orders for as long as possible, rendering them virtually meaningless."

(emphasis supplied)

41. The observations in ***Prabhavati*** *(supra)* have been upheld by the Hon'ble Supreme Court in ***Dushyant N. Dalal and Ors. vs. Securities and Exchange Board***, (2017) 9 SCC 660 in the following terms:

"31. We find that a learned Single Judge of the Bombay High Court has, in Prabhavati Ramgarib B. v. Divl. Railway Manager [Prabhavati Ramgarib B. v. Divl. Railway Manager, 2010 SCC OnLine Bom 171 : (2010) 4 Mah LJ 691] , specifically held as follows : (SCC OnLine Bom paras 35-36 : Mah LJ pp. 702-03, paras 35-36)

"35. The petitioner's claim for interest would fall within the ambit of the words "or other rule of law" in Section 4(1). The other rule of law being on grounds of equity. Even under the Interest Act, 1839, interest was payable under the proviso to Section 1 which reads:

'Provided that interest shall be payable in all cases in which it is now payable by law.'

Interest was payable by law under that Act in equity. This was recognised in a series of judgments. For instance in Trojan and Co. v. Nagappa Chettiar [Trojan and Co. v. Nagappa Chettiar, 1953 SCR 789 : AIR 1953 SC 235] , the Supreme Court, in para 23, observed that it was well settled that interest is allowed by a court of equity in the case of money obtained or retained by

Signature Not Verified
Digitally Signed
By:MANISH KUMAR
Signing Date:22.12.2023
16:25:24

> *fraud. Interest was, therefore, awarded in equity.*
>
> *36. The position is not different under the Interest Act, 1978. The words, in Section 4(1) "or other rule of law" would include interest payable in equity. In fact, interest has been awarded by our courts in equity as well as on principles analogous to Section 34 of the Code of Civil Procedure on the basis that Section 34 is based upon principles of justice, equity and good conscience."*
>
> *32. We agree with the aforesaid statement of the law. It is clear, therefore, that the Interest Act of 1978 would enable Tribunals such as SAT to award interest from the date on which the cause of action arose till the date of commencement of proceedings for recovery of such interest in equity. […]"*
>
> (emphasis supplied)

42. In light of the decision of the Division Bench of this Court in ***Bhim Singh Bajeli*** *(supra),* wherein it was observed that the High Court can grant interest on the basis of principles of equity, in exercise of power under Article 226 of the Constitution of India, 1950, we do not find any reason to delve into the question of whether the Labour Court could have awarded interest in an application under Section 33C(2) of the Act. If at all, the decision and reasoning of the Hon'ble Supreme Court in ***Dushyant N. Dalal*** *(supra)* does not seem to favour the petitioner.

43. The respondents, in the present case, have suffered due to the inertia displayed by MCD in not extending the grant of pay scale entitlement of ACP/MACP to Pharmacists working with it in a time-bound manner.

Signature Not Verified
Digitally Signed
By:MANISH KUMAR
Signing Date:22.12.2023
16:25:24

44. Therefore, this Court finds it fit to award interest @6% per annum to the respondents on the claimed amount from the date of filing of the claim before the Labour Court in each of the petitions till the date of realization of the amount. The impugned orders in the respective petitions are modified to this extent. We make it clear that the above direction by this Court has been made in exercise of its power under Article 226 of the Constitution of India.

45. The Labour Court shall compute the amount due to each of the respondents in terms of the above directions. Pursuant to the said computation, the respondents shall be entitled to withdraw the amount deposited before the Registrar General of this Court.

46. In view of the aforesaid observations, the impugned orders are upheld insofar as they allow respondents' application under Section 33C(2) of the Act. As regards the award of interest by the Labour Court, directions are given in paragraphs 44 and 45 above.

47. The present batch of petitions is, therefore, disposed of in the above terms. Pending applications, if any, are rendered infructuous.

48. Copy of this judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

DECEMBER 21, 2023/mk

Signature Not Verified
Digitally Signed
By:MANISH KUMAR
Signing Date:22.12.2023
16:25:24