

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

SINGLE BENCH:

(Vivek Agarwal, J.)

Writ Petition No.7445/2013

.....Petitioner : K.R.Bedmutha Techno Associates Pvt.
Ltd.

Versus

.....Respondent : Arvind Arya

Shri Prashant Sharma and Shri Devendra Sharma, learned
counsel for the petitioner.

Shri Alok Katare, learned counsel for the respondent.

ORDER
(4/5/2017)

Petitioner has filed this petition being aggrieved by order dated 8.8.2013 passed by the Labour Court No.1,Gwalior, in Case No.COC:123/F/I.D. Act/2010, whereby the learned Labour Court has been pleased to allow application filed by the respondent/employee under the provisions of Section 33-c (2) of the I.D. Act and has directed the present petitioner to pay a sum of Rs.17630/- towards salary for the month of August and September, 2010 and a sum of Rs.1,695/- for salary upto 5th October, 2010 and mobile expenses upto September, 2010 to the extent of Rs.4,500, thus totaling Rs.23,825/- on the ground that respondent upon his transfer from Haridwar to Gwalior never submitted his joining and since he did not work, there is no question of payment of any salary or allowances till the date of termination i.e. 8.10.2010.

2. Learned counsel for the petitioner has placed reliance on the judgment of the Supreme Court in the case of **D.Krishnan and Anr. Vs. Special Officer, Vellore Coop. S.M. & Anr.** decided

on 16th May, 2008 in SLP(Civil) No.17518/2006 and submits that the Supreme Court has deprecated the order of the Labour Court and the High Court and has categorically held that they both were in error in treating as maintainable the applications made under Section 33-c (2) of the I.D. Act by the respondents. Learned counsel for the petitioner has also placed reliance on the judgment of Bombay High Court in the case of **Agricultural Produce Market Committee Solapur and Anr. Vs. Nagnath Jyotiram Ghodke (Dead) by LRs.** as reported in **2010 LLR 740** to submit that provisions of Section 33-c (2) of the I.D. Act were not applicable, and therefore, the order of the Labour Court deserves to be set aside.

3. On the other hand, learned counsel for the respondent/employee submits that it is an admitted position that respondent was an employee of the petitioner/Company who was transferred in May, 2010 from Haridwar. His salary was Rs.8,815/- and besides this, he was entitled to a sum of Rs.2,000/- as house rent allowance and another Rs.1,500/- per month for conveyance and travelling allowance. Salary for the month of June alongwith allowances was paid to him on 7.7.2010, but thereafter neither the salary, nor allowances have been paid to him and his services were terminated vide order dated 8.10.2010, therefore, he is entitled to salary and allowances upto the date of his termination. This fact was disputed by the present petitioner and they had filed reply to the claim statement and submitted that respondent/employee had not performed any work from May, 2010 till the date of his termination, and therefore, he is not entitled to claims put forth by him. It was also mentioned in the reply that work of the respondent was in the nature of administrative and managerial, therefore, the Labour Court has no jurisdiction and further objection was taken that an application under Section 33-c (2) of the I.D. Act is maintainable only when some amount has been ascertained by the Industrial Court upon adjudication. Since no amounts have been ascertained by the

Industrial Court upon adjudication, application under Section 33-c (2) of the I.D. Act is not maintainable. In view of such submission, it was prayed that application under Section 33-c (2) of the I.D. Act be dismissed.

4. Petitioner had filed affidavit of Shri D.W.Wadhone, General Manager of the Company, stationed at Chambure, Maharashtra, who had almost repeated the contents of the reply in affidavit under Order 18 Rule 4 CPC, but in para 4 of his affidavit he has categorically mentioned that respondent/employee never followed instructions of his senior officers and committed such acts which were causing continuous loss to the company, as a result his services were terminated. In cross-examination, he has admitted that employee was entitled to a sum of Rs.2,000/- for office rent which was made in the in the house of the employee. It is also mentioned that a computer was provided for Gwalior office and further he admitted that the applicant/employee was entitled to salary and allowances till he was in service and further admitted that order of termination of service dated 1.8.2010 was issued on 8.10.2010. In this backdrop, the case of the petitioner is to be examined. Petitioner's reliance on the case of **Agricultural Produce Market Committee Solapur (supra)** is on the ground that Bombay High Court held that under Section 33-c (2) of the I.D. Act recovery of money due from an employee can be made only when the relationship is that of employer employee between the parties. In that case, petitioner (management) had disputed the relationship of employer and employee and averred that respondent was a licensee and not an employee. In such backdrop, the Bombay High Court held that such dispute in regard to relationship of employer and employee cannot be decided by Labour Court in an application under Section 33-c (2) of the I.D. Act. Similarly, Supreme Court in the case of **D.Krishnan (supra)** was dealing with the issue of daily rated casual worker who claimed wages at the same rate as a regular worker and in that backdrop the Supreme Court was pleased to

quash the orders of the Labour Court and the High Court holding them to be in error inasmuch as since there was a dispute as to the entitlement of daily rated casual worker to be entitled for the same rate as a regular worker. It was held that such dispute could not have been adjudicated under the provisions of Section 33-c (2). On the other hand, learned counsel for the respondent has placed reliance on the judgment of this Court in the case of **Petcare, Division of Tetragon Chemie Pvt. Ltd. Bangalore Vs. M.P. Medical and Sales Representatives Association, Bhopal** as reported in **2006(2) M.P.L.J. 574** and also to the judgment of Supreme Court in the case of **A.Satyanarayana Reddy and others Vs. Presiding Officer, Labour Court and others** as reported in **2017(1) M.P.L.J. 313**. In the case of **Petcare, Division of Tetragon Chemie Pvt. Ltd. Bangalore (supra)** this Court was pleased to hold that right to claim salary after working is a right of the employee. Merely because the employer disputes the working of an employee, that by itself would not be sufficient to oust the jurisdiction of the Labour Court under Section 33-c (2) of the ID Act. Similarly, in the case of **A.Satyanarayana Reddy (supra)** it has been held that though there is cessation of relationship between employee and employer in VRS, but it does not cover the past dues like lay-off compensation, subsistence allowance etc. The workman would be entitled to approach the Labour Court under Section 33-c (2) of the I.D.Act.

5. In this backdrop, it is seen that the submission of learned counsel for the petitioner that respondent/employee did not join at Gwalior after his transfer gives rise to two admitted position that respondent was an employee of the petitioner/Company and since it is mentioned in the cross-examination that he was handed over a computer at Gwalior by the office, that means the presumption will be that employee had join at Gwalior, otherwise without joining no employer will handover any tools in favour of an employee. It is also evident that there is no rebuttal to the fact that salary for the month of June was paid to the employee on

7.7.2010. Since salary for the month of June and allowances were paid on 7.7.2010, this itself belies the submission of the petitioner that respondent/employee had never joined at Gwalior after his transfer in May, 2010. Thus, in this backdrop, the judgment in the case of **Agricultural Produce Market Committee Solapur (supra)** will not be applicable inasmuch as relationship of an employee and employer is established, and therefore, ratio of the said judgment is not applicable. This relationship gets further established from the admission that services of the employee were terminated vide order dated 1.8.2010 communicated on 8.10.2010. As far as decision in the case of **D.Krishnan (supra)** is concerned, that is also distinguishable inasmuch as in that case daily rated employees were claiming regular wages, therefore, there was a dispute as to the entitlement of a daily rated employee to claim regular wages and that could not have been granted by the Labour Court under the provisions of Section 33-c(2) of the I.D. Act without adjudication. But in the present case, there is no dispute about the rate of wages, and therefore, the ratio of the judgment in the case of **D.Krishnan (supra)** is also apparently distinguishable.

6. As has been noted above, the petitioner/Company had examined its General Manager before the Labour Court by filing affidavit under Order 18 Rule 4 CPC. In his affidavit, he has admitted about payment of Rs.2,000/- towards house rent allowance as the employee was managing the office from his residence. This admission supports the claim of the employee for a sum of Rs.2,000/- per month for house rent allowance. There is no whisper in the chief or cross-examination regarding quantum of salary which was quantified by the employee as Rs.8815 per month. Similarly, there is no denial as to the entitlement of the employee to conveyance and travelling allowance at the rate of Rs.1,500/- per month. Since these amounts have not been disputed and only dispute which was raised by the employer/petitioner was that employee after transfer from

Haridwar had not submitted his joining at Gwalior, and therefore, he is not entitled to any of the claims as were put forth by him before the Labour Court under Section 33-c (2) of the ID Act, it is clear that the amounts as were claimed by the employee were quantifiable as is the requirement of Section 33-c (2) of the I.D. Act. Similarly, petitioner has not led any evidence in regard to respondent discharging any managerial function, therefore, also the order impugned does not call for any interference. Since this Court has already mentioned above that submission of petitioner that employee had not submitted his joining at Gwalior stood belied on account of the fact that salary and allowances for the month of June were paid on 7.7.2010 and termination order was issued on 8.10.2010, therefore, the Labour Court has not committed any error in exercise of its authority under Section 33-c (2) of the I.D. Act. Therefore, the petition fails and is dismissed.

(Vivek Agarwal)
Judge

ms/-