

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR  
BEFORE  
HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA  
ON THE 17<sup>th</sup> OF MARCH, 2023  
MISC. PETITION No. 2572 of 2019**

**BETWEEN:-**

1. CLOTH MERCHANT ASSOCIATION,  
THROUGH ITS MANAGER, OFFICER  
NEAR OLD SABJI MANDI, BIHARI  
CHOWK, SATNA (MADHYA PRADESH)
  
2. SECRETARY, CLOTH MERCHANT  
ASSOCIATION, OFFICE NEAR OLD SABJI  
MANDI, BIHARI CHOWK, SATNA  
(MADHYA PRADESH)

.....PETITIONERS

*(BY SHRI UTTAM MAHESHWARI- ADVOCATE)*

**AND**

SRI LAXMI PRASAD NAMDEO, S/O GANPAT  
PRASAD NAMDEO, R/O MALVIA NAGAR, KALI  
JI MANDIR, KAMTA TOLA, SATNA (MADHYA  
PRADESH)

.....RESPONDENT

*(BY SHRI SANJAY KUMAR VERMA- ADVOCATE)*

**WRIT PETITION No. 17828 of 2015**

**BETWEEN:-**

1. CLOTH MERCHANT ASSOCIATION,  
THROUGH ITS MANAGER, OFFICE NEAR  
OLD SABJI MANDI, BIHARI CHOWK,  
SATNA (MADHYA PRADESH)

2. **SECRETARY, CLOTH MERCHANT ASSOCIATION, OFFICE NEAR OLD SABJI MANDI, BIHARI CHOWK, SATNA (MADHYA PRADESH)**

**.....PETITIONERS**

*(BY SHRI UTTAM MAHESHWARI- ADVOCATE)*

**AND**

**SHRI LAXMI PRASAD NAMDEO, S/O GANPAT PRASAD NAMDEO, R/O MALVIA NAGAR KALI JI MANDIR, KAMTA TOLA, SATNA (MADHYA PRADESH)**

**.....RESPONDENT**

*(BY SHRIANKIT SAHU- ADVOCATE)*

*This petition coming on for admission this day, the court passed the following:*

**ORDER**

This petition under Article 227 of the Constitution of India has been filed against the order dated 05.04.2019 passed by Presiding Officer, Labour Court, Satna in Case No. 10/15/ID Act/33/2-C by which the application filed by the respondent under Section 33-C (2) of Industrial Dispute Act has been allowed and the petitioners have been directed to pay the minimum wages to the respondent from February 2012 to March 2015.

2. Writ Petition No. 17828/2015 has been filed against the order dated 19.12.2014 passed by the Presiding Officer, Labour Court, Satna in Case No.5/12/ID Act by which the petitioners have been directed to pay the minimum wages to the respondent from the year 2008 to January 2012.

3. Except the date of order and the period of minimum wages all other facts are common. The respondent is common and the petitioners are common as well as the questions of law involved in both the petitions are common, therefore, by this common order both the petitions shall be decided.

4. The facts necessary for disposal of the present petition, in short, are that the respondent filed an application under Section 33-C(2) of Industrial Dispute Act, claiming that he has been paid less than Minimum Wages as well as Dearness Allowance. However, by the impugned award, the Labour Court has allowed the claim filed by the respondents and directed the petitioners to pay the difference of salary paid to the respondent and the minimum wages for the period starting from February 2012 to March 2015.

5. Challenging the orders passed by the Labour Court, it is submitted by the petitioners that the provisions of Section 33-C(2) of the Industrial Dispute Act are in the nature of execution and unless and until the liability is decided, no order under Section 33-C(2) of the Industrial Dispute Act is maintainable.

6. In the present case, the respondent without getting his right/claim adjudicated under Section 10 of the ID Act, directly approached the Labour Court under Section 33-C(2) of the Industrial Dispute Act which is not maintainable and to buttress his contention, the counsel for the petitioners has relied upon by the judgments passed by the Supreme Court in the Case of **Municipal Corporation of Delhi Vs. Ganesh Razak and Ors.**, reported in (1995) 1 SCC 235, **D. Krishnan and Ors. Vs. Special Officer, Vellore Co-operative Sugar Mill and Ors.**,

reported in **(2008) 7 SCC 22** and **State of Uttar Pradesh and Ors. Vs. Brijpal Singh**, reported in **(2005) 8 SCC 58**.

7. *Per contra*, the respondent has supported the findings given by the Labour Court. It is submitted that once it is accepted that the respondent had worked at least for 5 hours in a day, then he is entitled for the minimum wages meant for the entire day as provided under Section 15 of the Minimum Wages Act, 1948. Thus it is clear that no adjudication was required and under these circumstances, the application under Section 33-C(2) of the Industrial Dispute Act was maintainable. To buttress his contention, the counsel for the respondent has relied upon the judgments passed by a Division Bench of this Court in the case of **Secretary, Public Works Department and Others Vs. Halke**, reported in **2018 SCC OnLine MP 1132**, **Unipack Corrugators India Private Ltd. Vs. Babu Lal Rajak and Another**, reported in **2012 SCC OnLine MP 6329**, **Petcare Division of Tetragon Chemie Pvt. Ltd. Bangalore Vs. M.P. Medical and Sales Representative Association, Bhopal**, reported in **2006(2) MPLJ 574**.

8. Heard learned counsel for the parties.

9. Section 33-C of the Industrial Dispute Act read as under:-

**“33-C. 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 V-A or Chapter V-B, 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 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.

(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 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.”

**10.** The Supreme Court in the case of **Municipal Corporation of Delhi (supra)** has held as under:-

“8. Reference may be made first to the Constitution Bench decision in *Central Bank of India Ltd. v. P.S. Rajagopalan* on which Shri Rao placed heavy reliance. That was a case in which the question of maintainability of proceedings under Section 33-C(2) of the Act was considered in a claim made by the workmen on the basis of the Sastry Award. The employer disputed the claim of the workmen on several grounds including the applicability of Section 33-C(2) of the Act. It was urged that since the applications involved a question of interpretation of the Sastry Award, they were outside the purview of Section 33-C(2) because interpretation of awards or settlements has been expressly provided for by Section 36-A. This objection was rejected. This Court pointed out the difference in the scope of Section 36-A and Section 33-C(2) indicating that the distinction lies in the fact that Section 36-A is not concerned with the implementation or execution of the award whereas that is the sole purpose of Section 33-C(2); and whereas Section 33-C(2) deals with cases of implementation of individual rights of workmen falling under its

provisions, Section 36-A deals merely with a question of interpretation of the award where a dispute arises in that behalf between the workmen and the employer and the appropriate Government is satisfied that the dispute deserves to be resolved by reference under Section 36-A. In this context, this Court also indicated that the power of the Labour Court in a proceeding under Section 33-C(2) being akin to that of the Executing Court, the Labour Court is competent to interpret the award or settlement on which a workman bases his claim under Section 33-C(2), like the power of the Executing Court to interpret the decree for the purpose of execution. Relevant extract from that decision is as under: (SCR pp. 154-155)

“Besides, there can be no doubt that when the Labour Court is given the power to allow an individual workman to execute or implement his existing individual rights, it is virtually exercising execution powers in some cases, and it is well settled that it is open to the Executing Court to interpret the decree for the purpose of execution. It is, of course, true that the Executing Court cannot go behind the decree, nor can it add to or subtract from the provision of the decree. These limitations apply also to the Labour Court; but like the Executing Court, the Labour Court would also be competent to interpret the award or settlement on which a workman bases his claim under Section 33-C(2). Therefore, we feel no difficulty in holding that for the purpose of making the necessary determination under Section 33-C(2), it would, in appropriate cases, be open to the Labour Court to interpret the award or settlement on which the workman's right rests.”

This decision itself indicates that the power of the Labour Court under Section 33-C(2) extends to interpretation of the award or settlement on which the workman's right rests, like the Executing Court's power to interpret the decree for the purpose of execution, where the basis of the claim is referable to the award or settlement, but it does not extend to determination of the dispute of entitlement or the basis of the claim if there be no prior adjudication or recognition of the same by the employer. This decision negatives instead of supporting the submission of learned counsel for the respondents.

**13.** In these matters, the claim of the respondent-workmen who were all daily-rated/casual workers, to be paid wages at the same rate as the regular workers, had not been earlier settled by adjudication or recognition by the employer without which the stage for computation of that benefit could not reach. The workmen's claim of doing the same kind of work and their entitlement to be paid wages at the same rate as the regular workmen on the principle of "equal pay for equal work" being disputed, without an adjudication of their dispute resulting in acceptance of their claim to this effect, there could be no occasion for computation of the benefit on that basis to attract Section 33-C(2). The mere fact that some other workmen are alleged to have made a similar claim by filing writ petitions under Article 32 of the Constitution is indicative of the need for adjudication of the claim of entitlement to the benefit before computation of such a benefit could be sought. Respondents' claim is not based on a prior adjudication made in the writ petitions filed by some other workmen upholding a similar claim which could be relied on as an adjudication enuring to the benefit of these respondents as well. The writ petitions by some other workmen to which some reference was casually made, particulars of which are not available in these



matters, have, therefore, no relevance for the present purpose. It must, therefore, be held that the Labour Court as well as the High Court were in error in treating as maintainable the applications made under Section 33-C(2) of the Act by these respondents.”

**11.** The Supreme Court in the case of **Brijpal Singh (supra)** has held as under:-

“7. We heard the arguments of Mr Dileep Tandon, learned counsel appearing for the appellants and Mrs Shyamla Pappu, learned Senior Counsel appearing for the respondent.

8. In the background facts of this case, the following questions of law arise for consideration by this Court:

(1) Whether the High Court erred in allowing the order passed by the Labour Court filed by the respondent under Section 33-C(2) of the Industrial Disputes Act?

(2) Whether the pendency of Writ Petition No. 15172 of 1987 filed by the respondent herein, same being not finally disposed of, the liability to pay, if any to the workman concerned under Section 33-C(2) of the ID Act, does arise or not?

(3) Whether the High Court gravely erred in allowing the salary and bonus to the respondent, although he has not attended the office of the appellant after the stay order passed by the High Court dated 28-10-1987?

(4) Whether the Labour Court has jurisdiction to entertain and decide the undetermined claim?

9. Section 33-C of the Industrial Disputes Act reads thus:

“33-C. *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 V-A or Chapter V-B, 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.”

**10.** It is well settled that the workman can proceed under Section 33-C(2) only after the Tribunal has adjudicated on a complaint under Section 33-A or on a reference under Section 10 that the order of discharge or dismissal was not justified and has set aside that order and reinstated the workman. This Court in the case of *Punjab Beverages (P) Ltd. v. Suresh Chand* held that a proceeding under Section 33-C(2) is a proceeding in the nature of execution proceeding in which the Labour Court calculates the amount of money due to a workman from the employer, or, if the workman is entitled to any benefit which is capable of being computed in terms of money, proceeds to compute the benefit in terms of money. Proceeding further, this Court held that the right to the money which is sought to be calculated or to the benefit which is sought to be computed must be an existing one, that is to say, *already adjudicated upon* or provided for and must arise in the course of and in relation to the relationship between the industrial workman, and his employer. This Court further held as follows: (SCC p. 150, para 4)

“It is not competent to the Labour Court exercising jurisdiction under Section 33-C(2) to arrogate to itself the functions of an Industrial Tribunal and entertain a claim which is not based on an existing right but which

may appropriately be made the subject-matter of an industrial dispute in a reference under Section 10 of the Act.”

**12.** The Supreme Court in the case of **D. Krishnan and Ors. (supra)** has held as under:-

“5. The Labour Court in its award dated 24-5-2002 observed that only documentary evidence had been submitted by the parties and on an examination of the various documents on record, in particular the time cards produced by the appellants and the various representations made by them calling for overtime wages, held that the appellants had indeed worked overtime and were entitled to payment accordingly. The plea of the respondent management that the appellants were Managers and not workmen was repelled by observing that as the plea had not been taken in the written statement and only in the written submissions, it did not warrant acceptance. The court also held that though an application under Section 33-C(2) of the Act was in the nature of an execution and a determination of a claim could not be made thereunder, but as Section 59 of the Factories Act, 1948 provided for the payment of overtime wages and as the documents on record had proved the performance of overtime work, the behaviour of the management was “reprehensible and was liable to be punished”, more particularly, as the award in the case of *Jayavelu* had become final and had not been challenged. The application was accordingly allowed.”

**13.** On plain reading of Section 33-C of the Industrial Dispute Act it is clear that where any money is due to a workman from an employer, (1) under a settlement or (2) an award or (3) under the provisions of

Chapter VA or Chapter VB, then a workman himself or any other person authorized by him in writing in this behalf, or, in the case of the death of the workman or his assignee or heirs may make an application to the appropriate Government for the recovery of money due to him, and if the appropriate Government is satisfied that any money is due, it shall issue certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue. Thus, it is clear that an application under Section 33-C of the Industrial Dispute Act would be maintainable only for the execution of a settlement or award or the provisions of Chapter VA or Chapter VB of the Industrial Dispute Act.

**14.** Section 33-C of the Industrial Dispute Act does not provide for independent adjudication of rights and the only jurisdiction with the tribunal is to decide the question with regard to the quantum of money payable by the employer. The Supreme Court in the cases of **Municipal Corporation of Delhi (supra)**, **Brijpal Singh (supra)** and **D. Krishnan and Ors. (supra)** have held that the provisions of Section 33-C (2) of the Industrial Dispute Act are merely in the nature of execution. Therefore, it is clear that the jurisdiction of the Labour Court to decide the question of money is limited to the execution of an award or settlement or provisions of Chapter VA or Chapter VB of the Industrial Dispute Act.

**15.** It is not the case of the parties that any settlement had taken place between the parties with regard to payment of money. In fact there was a dispute as to whether the respondent was entitled for minimum wages or he was entitled for honorarium which was paid to him, and this dispute cannot be adjudicated under Section 33-C (2) of Industrial

Dispute Act.

**16.** Since, this Court has come to a conclusion that the application filed by the respondent under Section 33-C (2) of the Industrial Dispute Act was not maintainable, therefore, the subsequent submissions made by the counsel for the petitioners with regard to the status of this society as an Industry as well as the fact that Assistant Labour Commissioner itself has rejected the application filed by the respondent, shall not be decided as now they are of an academic issue only.

**17.** Accordingly, the order dated 05.04.2019 passed by Presiding Officer, Labour Court, Satna in Case No. 10/15/ID Act/33/2-C and the order dated 19.12.2014 passed by the Presiding Officer, Labour Court, Satna in Case No.5/12/ID Act are hereby set aside.

**18.** The petitions succeed and they are **allowed**.

**(G.S. AHLUWALIA)**  
**JUDGE**

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