

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 2nd OF MAY, 2023

MISC. PETITION No. 550 of 2021

BETWEEN:-

**MANAGER PARMALI WALLACE LIMITED
HOSHANGABAD ROAD BHOPAL (MADHYA
PRADESH)**

.....PETITIONER

***(BY SHRI AJAY MISHRA – SENIOR ADVOCATE WITH SHRI ARPIT TIWARI -
ADVOCATE)***

AND

**JAMNA SHAH S/O SHRI NANDU SHAH, ADULT,
VILLAGE MEEJAAB, POST PARUDHAR,
SASARAM DISTT. ROHATAS, BIHAR (BIHAR)**

.....RESPONDENT

(BY SHRI ANURAG GOHIL - ADVOCATE)

MISC. PETITION No. 551 of 2021

BETWEEN:-

**MANAGER PARMALI WALLACE LTD. THRO.
HOSHANGABAD ROAD BHOPAL (MADHYA
PRADESH)**

.....PETITIONER

***(BY SHRI AJAY MISHRA – SENIOR ADVOCATE WITH SHRI ARPIT TIWARI -
ADVOCATE)***

AND

NARAYAN PARMAR S/O SHRI SAMAT SINGH

PARMAR, ADULT, R/O 326 JANTA COLONY E-6 ARERA COLONY, BHOPAL (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI ANURAG GOHIL - ADVOCATE)

MISC. PETITION No. 552 of 2021

BETWEEN:-

MANAGER PARMALI WALLACE LTD. THR. HOSHANGABAD ROAD BHOPAL MP (MADHYA PRADESH)

.....PETITIONER

(BY SHRI AJAY MISHRA – SENIOR ADVOCATE WITH SHRI ARPIT TIWARI - ADVOCATE)

AND

PURUSHOTTAM VISHWAKARMA, S/O SHRI GANESH PRASAD VISHWAKARMA, ADULT, R/O 310, JANTA COLONY E-6 ARERA COLONY, BHOPAL MP (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI ANURAG GOHIL - ADVOCATE)

MISC. PETITION No. 553 of 2021

BETWEEN:-

MANAGER PARMALI WALLACE LIMITED HOSHANGABAD ROAD, BHOPAL (MADHYA PRADESH)

.....PETITIONER

(BY SHRI AJAY MISHRA – SENIOR ADVOCATE WITH SHRI ARPIT TIWARI - ADVOCATE)

AND

**KISHAN S/O SHRI BALDEV, ADULT, B-79
SHED, ASHOKA GARDEN, BHOPAL (MADHYA
PRADESH)**

.....RESPONDENT

(BY SHRI ANURAG GOHIL - ADVOCATE)

MISC. PETITION No. 554 of 2021

BETWEEN:-

**MANAGER PARMALI WALLACE LIMITED
HOSHANGABAD ROAD, BHOPAL (MADHYA
PRADESH)**

.....PETITIONER

***(BY SHRI AJAY MISHRA – SENIOR ADVOCATE WITH SHRI ARPIT TIWARI -
ADVOCATE)***

AND

**RAM SAJIWAN S/O SHRI CHOUTHU RAM
ADULT, JHUGGI NO.237 BHEEM NAGAR
NEAR VALLABH BHAWAN BHOPAL
(MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI ANURAG GOHIL - ADVOCATE)

MISC. PETITION No. 555 of 2021

BETWEEN:-

**MANAGER PARMALI WALLACE LIMITED
HOSHANGABAD ROAD BHOPAL (MADHYA
PRADESH)**

.....PETITIONER

***(BY SHRI AJAY MISHRA – SENIOR ADVOCATE WITH SHRI ARPIT TIWARI -
ADVOCATE)***

AND

RAM NATH S/O SHRI MANGAL PRASAD
ADULT, VILLAGE NIKHADI POST SHAHPUR
SUKUL TEHSIL AND DISTT. DEWARIA U.P.
(UTTAR PRADESH)

.....RESPONDENT

(BY SHRI ANURAG GOHIL - ADVOCATE)

MISC. PETITION No. 556 of 2021

BETWEEN:-

MANAGER PARMALI WALLACE LIMITED.
HOSHANGABAD ROAD. BHOPAL (MADHYA
PRADESH)

.....PETITIONER

*(BY SHRI AJAY MISHRA – SENIOR ADVOCATE WITH SHRI ARPIT TIWARI –
ADVOCATE)*

AND

MOHD. SHEIKH SHAFIQUE. S/O SHRI SHEIKH
BASHEER H.N.298/A. NEW ASHOKA GARDEN.
BHOPAL (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI ANURAG GOHIL - ADVOCATE)

MISC. PETITION No. 557 of 2021

BETWEEN:-

MANAGER PARMALI WALLACE LIMITED
HOSHANGABAD ROAD BHOPAL (MADHYA
PRADESH)

.....PETITIONER

*(BY SHRI AJAY MISHRA – SENIOR ADVOCATE WITH SHRI ARPIT TIWARI –
ADVOCATE)*

AND

**K.C. GEORGE, S/O SHRI K.V. CHACKO,
ADULT, R/O HOUSE NO.100, GOOD
SHEPHERD COLON, KOLAR ROAD, BHOPAL
(MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI ANURAG GOHIL - ADVOCATE)

These petitions coming on for admission this day, the court passed the following:

ORDER

1. By this common order M.P.No.551/2021, M.P.No.552/2021, M.P.No.553/2021, M.P.No.554/2021, M.P.No.555/2021, M.P.No.556/2021 and M.P.No.557/2021 shall also be decided.
2. For the sake of convenience, facts of M.P.No.550/2021 shall be referred.
3. Respondent Jamna Shah had filed an application under section 33C(2) of the Industrial Disputes Act (hereinafter referred to as 'the I.D.Act') for recovery of the backwages awarded by the Labour court No.1, Bhopal by order dated 1.6.2016 in Case No.34/1986-I.D. Ref. By the aforesaid order it was directed that the respondent is entitled to receive 50% of the backwages from the date of his termination, i.e. 1986 till he attains the age of superannuation. The relief for reinstatement was denied on the ground that the respondent has already attained the age of superannuation. Since backwages were awarded by the Labour Court, therefore, an application under section 33C(2) of the I.D.Act was filed for recovery of the said amount.
4. A preliminary objection was raised by the petitioner that against the order dated 1.6.2016 passed in Case No.34/1986/I.D. Ref., the

petitioner has already filed a Writ Petition No.1017/2017 which is pending consideration before the High Court. However, Labour Court No.1, Bhopal by order dated 16.3.2020 passed in Case No.15/2017-I.D.Act has allowed the application filed by the respondent under section 33C(2) of the I.D.Act and has directed the petitioner to pay an amount of Rs.9,82,294.70 with 12% interest.

5. Challenging the order passed by the Labour Court No.1, Bhopal, it is submitted by the counsel for the petitioner that since W.P.No.1017/2017 which was filed against the original order dated 1.6.2016 is still pending, therefore, the Labour Court should have stayed the further proceedings awaiting the outcome of W.P.No.1017/2017. It is further submitted that no interest was awarded by the Labour Court in its original order dated 1.6.2016 and, therefore, the Labour Court should not have travelled beyond the original award and should not have awarded interest at the rate of 12% per annum. It is further submitted by counsel for the petitioner that by Amendment Act No.24/2010 which came into force on 15.9.2010 sub section (9) and (10) have been inserted in section 11 of I.D.Act and thus every award made, order issued or settlement arrived at by or before Labour Court should be executed in accordance with the procedure laid down for execution of orders and decree of a Civil Court under Order 21 of the CPC and the Labour Court or Tribunal or National Tribunal, as the case may be, shall transmit any award, order or settlement to a civil court having jurisdiction and such Civil Court shall execute the award, order or settlement as if it were a decree passed by it.

6. It is submitted that in view of section 11(10) of the I.D.Act, the Labour Court has lost its jurisdiction to execute the order/award passed by it under section 33C(2) of the I.D.Act. It is further submitted that since W.P.No.1017/2017 is pending, therefore, this petition may also be taken up along with W.P.No.1017/2017 for analogous hearing.
7. Heard the learned counsel for the parties.
8. It is not disputed by any of the parties that there is no stay of execution of order dated 1.6.2016. Once, this Court has not granted any stay order in W.P.No.1017/2017 then it is clear that there was no impediment for the Labour Court to entertain the application filed under section 33C(2) of the I.D.Act. Order 41 Rule 5 CPC provides that mere filing an appeal would not operate as a stay. Furthermore, counsel for the petitioner could not point out any provision of law from the I.D.Act to the effect that mere challenge of the order passed by the Labour Court would amount to stay of execution of the order. Under these circumstances, the submission made by counsel for the petitioner that since W.P.No.1017/2017 is pending before this Court then the Labour Court should not have entertained the application under section 33C(2) of the I.D.Act is misconceived and is hereby **rejected**. Even counsel for the petitioner could not point out as to why no prayer was ever made in W.P.No.1017/2017 for stay of effect and operation of final order dated 1.6.2016.
9. Be that whatever it may be.
10. The next contention of counsel for the petitioner is that this writ petition may also be taken up along with W.P.No.1017/2017 for analogous hearing.

11. The said contention made by counsel for the petitioner is liable to be **rejected** for the simple reason that the controversy involved in W.P.1017/2017 is completely different from the controversy involved in the present case. The present case arises out of the execution proceedings of the final order dated 1.6.2016 which is under challenge before this court in W.P.No.1017/2017. If Writ Petition No.1017/2017 is dismissed, it will not have any adverse effect on the order in question and if W.P.No.1017/2017 is allowed then the respondent shall be under obligation to refund the amount which he would receive in execution of final order dated 1.6.2016.
12. It is submitted by counsel for the petitioner that by the final order dated 1.6.2016, the Labour Court No.1 Bhopal had held that the respondent is entitled for 50% of the backwages from the year 1986 till their age of superannuation. However, it is submitted that by the impugned award, the Labour Court No.1 has also included the gratuity, provident fund, increment, etc. which was never directed to be paid by the final order dated 1.6.2016. Therefore, the Labour Court No.1, Bhopal has travelled beyond the order which was passed in favour of the respondent.
13. Considered the submissions made by counsel for the petitioner.
14. The operative part of the order dated 1.6.2016 reads as under :-
वर्ष 1986 से उनके द्वारा अधिवार्षिकी आयु पूर्ण किये जाने की दिनांक तक का 50 प्रतिशत पिछला वेतन प्राप्त करने के अधिकारी हैं।
15. Thus, the golden word is **backwages**. The word 'wages' has been defined in section 2(rr) of the I.D.Act which reads as under :-

“wages” means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes-

- (i) Such allowances (including dearness allowance) as the workman is for the time being entitled to;
- (ii) The value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;
- (iii) any travelling concession;
- (iv) any commission payable on the promotion of sales or business or both;
 - but does not include –
 - (a) any bonus;
 - (b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;
 - (c) any gratuity payable on the termination of his service;

16. Thus, whatever amount is covered under section 2(rr) of the I.D.Act would be wages of an employee. Since the direction was to pay 50% of the **backwages** from the year 1986 till the date of their superannuation, therefore, the respondent is entitled for all the enhancements which must have taken place during this period, i.e. from the year 1986 till the date of his superannuation.

17. Counsel for the petitioner could not point out as to how the calculation done by the Labour Court No.1 is bad in law. In view of section 2(rr) of the I.D.Act it is held that the Labour Court did not commit any mistake by directing recovery of Rs.9,82,294.74 from the petitioner.

18. So far contention of counsel for the petitioner that after the incorporation of section 11(10) of the I.D.Act, the Labour Court has lost its power under section 33C(2) of the I.D.Act is concerned, the same is misconceived.
19. Section 11(9) and 11(10) of the I.D. Act do not take away the jurisdiction of the Labour Court as provided under section 33C(1) and C(2) of the I.D.Act. Section 11(9) and 11(10) of the I.D.Act merely creates a new forum for the execution of the decree.
20. A decree can be executed by a court which passed it or by a court to which it is sent for execution. Therefore, if an award is transferred to civil court for its execution then objection cannot be raised that since the award was not passed by the civil court, therefore, it cannot execute the same. In fact, section 11(9) and 11(10) of the I.D.Act confers power on the civil court to execute the award passed by the Labour Court and it does not take away the power of the Labour Court to execute the award.
21. Counsel for the petitioner could not point out as to how the incorporation of section 11(9) and 11(10) of the I.D.Act would make the provision of section 33C of the I.D.Act otiose.
22. So far as the contention of counsel for the petitioner that the Labour Court should not have awarded 12% interest is concerned, the same appears to have considerable force.
23. If power is conferred on the executing Court to go beyond the decree then it would amount to modification of the decree which otherwise can only be done by a superior court. Thus, by enabling the executing

court to go beyond the decree, the powers of the superior court cannot be conferred on it.

24. The Supreme Court in the case of **State Bank of India v. M/s Indexport Registered and others, reported in AIR 1992 SC 1740** has held that no executing court can go beyond the decree and all the pleas as to the rights which the petitioner had, should have been taken during the trial and not after the decree is put for execution.
25. The Supreme Court in the case of **Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman, reported in (1970) 1 SCC 670** has held that the Executing Court cannot go beyond the decree and the executing court must take the decree according to its tenor. Even if the decree is erroneous, still it is binding between the parties.
26. Gauhati High Court in the case of **Lakheswar Hazarika Vs. Presiding Officer and ors. Reported in (2007)1 GLR 545** has held that the executing court cannot go behind the decree nor can it add or subtract from the provisions of the decree, the same limitation can also apply to the Labour Court.
27. Thus it is clear that the Labour Court being akin to an executing court cannot go beyond the award passed by the same court.
28. Counsel for the respondent could not point out any provision of law which mandates the payment of interest on delayed payment. Since no direction with regard to accrual of interest on the delayed payment was given, therefore, the Labour Court while entertaining an application under section 33C(2) of the I.D.Act can award interest only if there is any statutory provision for the same. Since counsel for the respondent could not point out any such provision of law, therefore, this Court is

of the considered opinion that in absence of any direction in the final order regarding payment of interest, the Labour Court should not have directed for payment of the outstanding amount along with interest of 12%.

29. Thus, the direction to pay the outstanding amount with 12% interest was beyond the competence of the Labour Court. Accordingly, the said direction is hereby **set aside**.
30. Accordingly, the order dated 16.3.2020 passed by Labour Court No.1 Bhopal in Case No.15/17-I.D. Act is affirmed subject to the modification mentioned above.
31. Since, the original order passed by the Labour Court is already under challenge in a writ petition filed before this court, therefore, it is observed that any payment which shall be made in compliance of the impugned order shall be subject to the outcome of W.P.No.1017/2017. The respondents are directed to furnish necessary security as well as undertaking that in case of any variation or setting aside of the original order then the amount so received by them shall be refunded without any protest.
32. With aforesaid observations, M.P.No.550/2021, M.P.No.551/2021, M.P.No.552/2021, M.P.No.553/2021, M.P.No.554/2021, M.P.No.555/2021, M.P.No.556/2021 and M.P.No.557/2021 are **disposed of**.

(G.S. AHLUWALIA)
JUDGE

HS