



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

212 +215

Decided on : 12.05.2025

CWP-4282-2000 (O&M)

M/S EICHER TRACTORS LTD.

..PETITIONER

Versus

THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, FARIDABAD AND OTHERS

...RESPONDENTS

CWP-3117-2001 (O&M)

STATE OF PUNJAB THROUGH CHIEF ENGINEER/RSDC,
IRRIGATION WORKS, PUNJAB.

..PETITIONERS

Versus

NATHA SINGH AND ANR

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Rahul Rathore, Advocate
appeared through virtual mode and
Mr. Aman Chawariya, Advocate
for the petitioner in CWP-4282-2000.

Mr. Harneet Sharma, Advocate
for respondent No. 2 in CWP-4282-2000.

Mr. TPS Chawla, Sr. DAG, Punjab.

Mr. Kanwaljit Singh, Senior Advocate with
Mr. Sukhdeep S. Chhatwal, Advocate for the respondents.
In CWP No. 3117-2001.

HARSIMRAN SINGH SETHI, J. (Oral)

1. Both petitions, the details of which are mentioned in the heading, involve common point of law and common set of facts, hence, they are being dealt together.



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2. In CWP-4282-2000, the challenge is to the impugned award dated 17.01.2000 (Annexure P-16) and in CWP-3117-2001, the challenge is to the impugned award dated 17.08.2000 (Annexure P-1) by which, in an application filed under Section 33 C (2) of the Industrial Disputes Act, 1947, adjudication has been done qua the entitlement of the wages of the respondent-employee.

3. Learned counsel for the petitioner-company (CWP-4282-2000) argues that there was no master and servant relationship between the petitioner-company and the respondents-workman and the respondents-workmen were working with the petitioner-company through the contractor, hence, without deciding the issue of master and servant relationship between the petitioner-company and respondents-workman, the claim being raised by the respondents-employee could not have been adjudicated and that too under an application filed under Section 33 C (2) of the Industrial Disputes Act, 1947, where only, undisputed amount is admissible either under an impugned award or in settlement.

4. Learned counsel for the respondents-workmen submits that though, the respondents-workmen were working under the contractor but, as the contractor was not paying the amount to the respondents-workmen, the principal employer has been held liable by the Tribunal to pay the said amount to the respondents-workmen, which is perfectly valid and legal.

5. In CWP No. 3117 of 2001, the grievance being raised by the workmen were that they are entitled for a higher pay-scale while working on the post of Mistri, which was being contested by respondent-State.

6. Learned counsel for the petitioner-State submits that once, the



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claim of the respondent-workman was being contested, the same needed adjudication and no adjudication could have been done by the Tribunal in an application under Section 33-C(2) of the 1947 Act.

7. I have heard learned counsel for the parties and have gone through the case file with their able assistance.

8. As per the settled principle of law, where an adjudication of the claim is required to grant relief to the workmen, an application under Section 33-C (2) of the 1947 Act will not be maintainable. Reliance can be placed upon the judgment of Hon'ble Supreme Court of India in **Civil Appeal No.813 of 2022 titled as M/s Bombay Chemical Industries vs. Deputy Labour Commissioner and another, decided on 04.02.2022**, wherein it has been held that Labour Court has no jurisdiction and cannot adjudicate the dispute of entitlement in an application filed under Section 33-C (2) of the 1947 Act. Relevant paragraphs 6 and 7 of the said judgment are as under:-

“6. At the outset it is required to be noted that respondent No.2 herein filed an application before the Labour Court under Section 33(C)(2) of the Industrial Disputes Act, demanding difference of wages from 01.04.2006 to 31.03.2012. It was thus the case on behalf of respondent No.2 that he was working with the appellant as a salesman. However, the appellant had taken a categorical stand that respondent No.2 was never engaged by the appellant. It was specifically the case on behalf of the appellant that respondent No.2 had never worked in the establishment in the post of salesman. Therefore, once



there was a serious dispute that respondent No.2 had worked as an employee of the appellant and there was a very serious dispute raised by the appellant that respondent No.2 was not in employment as a salesman as claimed by respondent No.2, thereafter, it was not open for the Labour Court to entertain disputed questions and adjudicate upon the employeremployee relationship between the appellant and respondent No.2. As per the settled proposition of law, in an application under Section 33(C)(2) of the Industrial Disputes Act, the Labour Court has no jurisdiction and cannot adjudicate dispute of entitlement or the basis of the claim of workmen. It can only interpret the award or settlement on which the claim is based. As held by this Court in the case of Ganesh Razak and Anr. (supra), the labour court's jurisdiction under Section 33(C)(2) of the Industrial Disputes Act is like that of an executing court. As per the settled proposition of law without prior adjudication or recognition of the disputed claim of the workmen, proceedings for computation of the arrears of wages and/or difference of wages claimed by the workmen shall not be maintainable under Section 33(C)(2) of the Industrial Disputes Act. (See Municipal Corporation of Delhi Vs. Ganesh Razak and Anr. (1995) 1 SCC 235). In the case of Kankuben (supra), it is observed and held that



whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33C (2) of the ID Act. It is further observed that the benefit sought to be enforced under Section 33C (2) of the ID Act is necessarily a preexisting benefit or one flowing from a preexisting right. The difference between a preexisting right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33C (2) of the ID Act while the latter does not.

7. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, when there was no prior adjudication on the issue whether respondent No.2 herein was in employment as a salesman as claimed by respondent No.2 herein and there was a serious dispute raised that respondent No.2 was never in employment as a salesman and the documents relied upon by respondent No.2 were seriously disputed by the appellant and it was the case on behalf of the appellant that those documents are forged and/or false, thereafter the Labour Court ought not to have proceeded further



with the application under Section 33(C)(2) of the Industrial Disputes Act. The Labour Court ought to have relegated respondent No.2 to initiate appropriate proceedings by way of reference and get his right crystalized and/or adjudicate upon. Therefore, the order passed by the Labour Court was beyond the jurisdiction conferred under Section 33(C)(2) of the Industrial Disputes Act. The High Court has not appreciated the aforesaid facts and has confirmed the same without adverting to the scope and ambit of the jurisdiction of the Labour Court under Section 33(C)(2) of the Industrial Disputes Act.”

9. Learned counsel for the respondents-workman has not been able to dispute the said settled principle of law reproduced herein above.

10. A bare perusal of the above would show that the claim as to whether the workman are the employees of the contractor, or the petitioner-company was to be adjudicated, which is not permissible under an application under Section 33-C (2) of the 1947 Act.

11. Similarly, the grant of particular pay-scale could have only been granted after adjudication, which adjudication has been done by the labour Court while considering an application under Section 33-C (2) of the 1947 Act.

12. Keeping in view of the above, the jurisdiction exercised by the Tribunal to decide the *lis* between the petitioner-company and the



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respondents-workman so as to decide the master and servant relationship between them and that too while adjudicating an application filed under Section 33-C (2) of the 1947 Act was not permissible.

11. Similarly, the grant of pay-scale which was being contested by the respondent-State could not have been granted by adjudicating the issue under an application filed under Section 33-C (2) of the 1947 Act. Hence, the impugned award dated 17.01.2000 (Annexure P-16) in CWP No. 4282 of 2000 passed by the Tribunal under Section 33-C (2) of the 1947 Act holding the petitioner-company liable for the payment to the respondents-workman by adjudicating the master and relationship between petitioner-company and the respondents-workman is set-aside and, the impugned award dated 17.08.2000 (Annexure P-1) in CWP No. 3117 of 2001 is also set-aside.

11. However, the respondents-workmen are will be free to avail appropriate remedy under the provisions of Industrial Disputes Act, 1947 for the redressal of their grievances as admissible under law.

12. Present petition are allowed in above terms.

13. Pending civil miscellaneous application, if any, stands disposed of.

14. A photocopy of this order be placed on the file of connected case.

**(HARSIMRAN SINGH SETHI)
JUDGE**

12.05.2025

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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No