

KAMS050000052025



Presented on : 18-01-2025
Registered on: 18-01-2025
Decided on : 20.05.2026
Duration : 1 years, 4 months, 2 days

BEFORE THE LABOUR COURT AT MYSURU

PRESENT

SRI B.K. RAVIKANTHA, B.A., L.L.B.,
District Judge and Presiding Officer,
Labour Court, Mysuru.

Dated: This the 20th day of May, 2026

Application No.1/2025

Applicant : H.M. Nagesh
S/o Late Nagendra,
Aged About 60 Years,
R/At 2656, 3rd Cross, K.G. Koppal,
Mysuru

(By Sri. **Mohankumar.S.V.**, -Advocate)

V/s

Respondent :1. The Management of KSIC
Central Office, R/By Its Managing
Director, M.G. Road,
Bengaluru-560 001.

2. The General Manager **of KSIC**
Silk Weaving Factory
Manandavadi Road
Mysuru-570 008.

(By Sri. **J.Putushotham**, -Advocate)

ORDER

This is the application filed under section **33(C)(2) of the Industrial Disputes Act,1947**, directing the respondents to pay the arrears of salary/wages, bonus and leave encasement totally amounting to Rs.77,59,336/- to applicant.

2. In the application the Applicant contended that, the case in IID No.107/2006 instituted by the applicant questioning the illegal termination from service was came to be allowed by this court in part modifying the punishment of termination to that of withholding of three annual increments with cumulative effective and thereby directing the second party/respondents to reinstate the first party/applicant and holding that the first party/applicant is not entitle to any back wages. Further, an option was given to the second party to institute the first party/applicable into service or to consider the question of giving voluntary retirement to the first party/applicant. Further, it is held that in case second party/ respondents sanctions voluntary retirement the first party/applicant will be entitle to all terminal benefits open to him under law. The said order of the Labour Court in IID.No.107/2006 came into force from the month of February-2011. The respondents have not complied the orders of Labour Court nor questioned the same before the Hon'ble High Court of Karnataka.

3. However, the applicant questioned the orders of Labour Court before Hon'ble High Court of Karnataka in W.P.No. 36902/2011 (L-TER). The Hon'ble High Court of Karnataka modified the orders of the Labour Court by withholding three annual increments of the petitioner/applicant and directing the respondents to reinstate the petitioner with continuity of service and 40% of back wages from the date of his termination till the date of reinstatement. The respondents have not complied the said orders of the Hon'ble High Court. Thereafter the respondents have preferred the Writ Appeal No.404/2022 against the applicant questioning the order passed in W.P.No.36902/2011 (L-TER). The Hon'ble High Court of Karnataka in W.A.No.404/2022 passed orders holding that "direction to pay 40% of back wages is set at naught; however rest of the directions are left intact".

4. Further it is submitted that, the respondents have reinstated the applicant with effect from the date on 13.12.2023, thereon-wards paying the wages to the applicant, the applicant received the wages in the month of January of sum of Rs.74,407/-, for the month of February a sum of Rs.75,837/-, for March a sum of Rs.79,302/- and for April a sum of Rs.85,835/-. Thereafter the applicant was retired from service

on 30.04.2024. The applicant had received the gratuity amount of Rs.11,95,175/-.

5. Further it is submitted that, consequent to the order of Labour Court dated.01.12.2010 the applicant is entitled for 100% arrears of salary/wages from the month of March-2011 upto 30.12.2023. Moreover, the Hon'ble High Court of Karnataka has not modified the order of reinstatement and the said order was kept intact till the order in W.A.No.404/2022.

6. Further it is submitted that, the respondents have complied the order in the month of December-2023, until the applicant was not paid the wages U/sec.17B of Industrial Disputes Act. Hence the applicant is entitled for the arrears of salary/wages and other consequential benefits as mentioned in the table A to C of the petition from the period of 01.03.2011 till 30.12.2023. The respondents have not followed the orders of Labour Court from the date of its order till the order in Writ Appeal. The applicant has not received the wages when an appeal was pending before the High Court. Hence the applicant is legally entitled to receive the aforesaid benefits from the respondents. Hence prays to allow the application.

7. On the other hand the respondent/management has filed objections contending that, the application is not maintainable

either in law or on fact. It is submitted that, the petitioner has sent a letter dated.29.07.2006 regarding opting voluntary retirement as per the notification No.KSIC/PER/VRS/2006-07, dated.15.07.2006. As per KSBPE guidelines the VRS scheme was not applicable to the applicant who was facing disciplinary proceedings. Moreover, when applicant submitted that letter, the second party/respondent had not notified any VRS scheme. Hence the question of applying or accepting his VRS does not arise at all. As per the enquiry report the charges leveled against the applicant were proved. Hence his services were terminated on.02.09.2006.

8. It is submitted that, the applicant has absolutely no vested right for any of his claims in the application and the same requires to be rejected.

9. Further it is submitted that, the Hon'ble High Court of Karnataka not passed any order regarding the arrears of wages or back wages, hence the applicant is not entitle for any money.

10. It is submitted that, the applicant was reinstated into service without back wages that means he was not entitled for any arrears or back wages from the date of termination till the date of reinstatement.

11. It is submitted that, the applicant was granted continuity service by the Labour Court, which the Hon'ble High Court held is only for the purpose of retired benefits.

12. It is submitted that in view of the above the applicant seeking monetary benefits in respect of earned leave and annual leave for the period he did not work or render any service. The earned leave and annual leave with wages are one and the same. The annual leave with wages has to be earned by working for a number of days in particular calendar year and a worker does not become entitled to annual leave with wages automatically. The applicant did not perform any work during the period for which is claiming annual leave and wages and the applicant has also not been granted consequential benefits. Hence the applicant is not entitled to any annual leave with wages.

13. Further it is submitted that, the payment of bonus is fully governed by the Payment of Bonus Act. No bonus can be claimed in application U/sec.33C(2) of Industrial Disputes Act. Hence prays to reject or dismiss the application.

14. The following point arises for consideration:

- 1. Whether the applicant is entitled for the arrears of salary/wages for the period of 01.03.2011 to 13.12.2023,**

**bonus and leave encashment and
cost as prayed for?**

2. If so, what Order?

15. On behalf of the Applicant, he himself got examined as A.W-1 and got marked 5 documents as per Ex.A-1 to Ex.A-5. On behalf of the respondent one Sri.Siddalinga Prasad S.G is examined as R.W-1 and got marked 6 documents as per Ex.R1 to Ex.R6.

16. I have heard both counsels and perused the records.

17. My findings on the above Points are as follows;

Point No.1: "Negative"

Point No.2: As per final order for the following:

REASONS

18. Point No.1: I have heard Sri.MSV advocate for the applicant and Sri.JP advocate for the respondents. During the course of arguments the learned counsel for the applicant vehemently submitted that this Court has got power U/s.33C(2) to interpret the award passed by this Court in IID 107/2006. If the order passed by this Court is properly interpreted this Court comes to know that the respondent has not reinstated the applicant into service. As per the order of the Labour Court if the applicant was reinstated into service, his leaves would have been saved. Hence, he is entitled for leave encashment or

arrears of salary from 01.03.2011 to 13.12.2023. This arrears of wages is being claimed in the present petition. Right from the order of Labour Court till the order of Hon'ble High Court of Karnataka passed in Writ. Appeal No.404/2022 the order with regard to reinstatement of the applicant/first party has neither been modified nor disturbed. The management should have been reinstated the applicant into service from 03.10.2011 to 13.12.2023 as per the orders of the Labour Court. Hence he is entitled for arrears of wages for the said period. Further it is argued that he is not pressing the claim with regard to the bonus. But he is only pressing the claim with regard to arrears of salary/wages and leave encashment as narrated in the claim application. Hence, prays to allow the petition as prayed for.

19. On the other hand, the Learned Counsel for the respondent would submit that the applicant is claiming arrears of wages from 2011 to 2023, for which there is no Pre-adjudication. With respect to the claims U/s.33C(2) this Court should act only as executing Court. It should have been shown to the Court that the monetary relief being claimed has been adjudicated upon in the earlier dispute. The applicant should establish before the Court that he is entitled for recovery of money due from an employer. There should be an existing right to claim the amount. The award of the Labour Court does not

say that the applicant is entitled to receive any such amount from the employer. U/s 33C(2) this Court does not have any such power to order for leave encashment. He has not substantiated as to how he is entitled for 168 days leave encashment from the respondents. This Court being executing Court does not have any such power to asses or do such exercise of determining the claim of the applicant in this proceedings. When the claim pertaining to 40% of back wages is disregarded by the Hon'ble High Court in WA.425/2022, how can the claim pertaining to 100% of back wages is maintainable, has not been substantiated. Hence application is not maintainable and not applicant is not entitled for any claim as prayed for. In support of his arguments the learned Counsel also places reliance on the following judgments:

- 1.2022 LLR 251(SC)-Bombay Chemical Industries Vs Deputy Labour Commissioner and another.
- 2.2013 LLR 768 (Gujarath High Court)-Sai Krupa Dyeing and Printing Mills Pvt. Ltd., Vs Chandrapal Ramanath Yadav and others.
- 3.2014 LLR 722 (Andhra Pradesh High Court) - Superintending Engineer, O&M Circle, NSLC Unit, Takulapally, Khammam and one another Vs K.Gnana Prasad Rao, Warangal District and one another.

4.2003 LLR 1118 (Gujarath High Court) Gujarath Water Supply and Sewerage Board and another Vs Ketanbhai Dinakary Pandya, Amreli.

5.1995 (1) LLJ 395 SC - Municipal Corporation of Delhi and Ganesh Razak and another.

6.2008 LLR 765 SC - HP State Electricity Board and another Vs Ranjit Singh and others.

7.2014 LLR 815 (Punjab Haryana High Court) - Haryana State through General Manager Haryana roadways, Hisar Depot, Hisar Vs Presiding Officer, Labour Court, Hisar and others.

Hence prays to reject the claim.

20. In the present case, in order to substantiate his contention the applicant himself has stepped into the witness box and submitted his affidavit in lieu of his chief examination. In the chief affidavit the applicant has reiterated the averments of application. It is his contention that, the Labour Court has passed award in IID 107/2006 directing the respondents to reinstate the first party on 01.12.2010, the said order was came into force w.e.f. the month of February 2011 through Official notification issued by Labour Authority, but the respondents not complied the said order with immediate effect from the date of official notification. Therefore, the applicant is entitled for 100%

back wages from the month of 2011 till 30.12.2023. Moreover, the Hon'ble High Court of Karnataka has not modified the order of reinstatement and the order of Labour Court regarding reinstatement which was kept intact till the order of W.A.No.404/2022.

21. Apart from affidavit evidence, the applicant has also produced letter of additional Labour Commissioner dated.04.03.2025, Certified copy of award passed in IID 107/2006, Certified copy of order passed in W.P.No.36902/2011 (L-TER) and Certified copy of order passed in W.A.No.425/2022(L-TER) and appendix document for gratuity amount as per ExA-1 to A-5.

22. On the other hand, the respondent having entered the witness box as RW-1, has submitted affidavit evidence by reiterating the averments of objection statement. Apart from this the RW-1 has got marked copy of letter dated.03.05.2011 issued by the management, copy of letter dated.04.12.2023 given by the applicant to the respondent management, copy of letter dated.11.12.2023 given by the applicant to the respondent management, Copy of office order dated.07.12.2023, copy of office order dated.13.12.2023 and copy of order dated.02.05.2025, as per ExR-1 to R-6.

23.Thus, on going through the oral and documentary evidence placed on record, it can be seen that according to the petitioner he is entitled for 100% back wages or arrears of salary/wages from the month of March 2011 to 30.12.2023 from the respondents. The respondents have complied the order in the month of December 2023, but till then they have not paid wages U/s. 17B of ID Act. Hence, he is entitled for back wages and other consequential benefits as mentioned in the table from 01.03.2011 to 30.12.2023. It is not in dispute that in the award passed by the Labour Court in IID 107/2006, this Court has specifically observed that the first party is not entitled to any back wages. However, option was given to the second party to reinstate the first party into service or consider the question of giving voluntary retirement to the first party as per the application already submitted by the first party for VRS.

24. Felt aggrieved by the Judgment of the Labour Court, the first party/applicant namely, Sri.H.M.Nagesh preferred W.P.No.36902/2011 (L-TER) before the Hon'ble High Court of Karnataka, wherein the Hon'ble High Court had directed the respondent/Management to reinstate the petitioner/first party with continuity of service and 40% of back wages from the date of his termination till the date of his reinstatement.

25. The respondent/Management feeling aggrieved by the judgment of Hon'ble High Court, has preferred W.A.No.404/2022 C/W W.A.No.425/2022(L-TER) before the division bench of Hon'ble High Court of Karnataka, wherein the Hon'ble High Court partly allowed the petition by holding that the direction to pay 40% of back wages is set at naught and kept intact the rest of the directions.

26. Thus, in the W.A.No.404/2022 the Hon'ble High Court of Karnataka has disregarded the order regarding 40% of back wages ordered in favour of the first party/applicant in the earlier W.P.No.36902/2011. Thus, on going through the entire material on record it becomes manifestly clear that there is no order as such with regard to payment of arrears of salary/wages or back wages for the period of 01.03.2011 to 13.12.2023 and leave encashment to the applicant herein as claimed in the present application. Thus, nowhere from the documents it is forthcoming that the respondent factory is due to the first party the claim amount shown in the petition towards arrears of salary/wages, back wages and leave encashment.

27. So, in the instant case it is material point to ascertain and adjudicate whether the relief claimed by the applicant u/s 33(C)(2) of Industrial Disputes Act, 1947 is to be granted or not? Therefore, before going to determine the benefits to be entitled

by the applicant it is required to ascertain whether he is having any existing right to claim the above mentioned monetary benefits. Hence, let me proceed to see whether the applicant has established that, the application filed for the reliefs claimed by him u/s 33(C)(2) of Industrial Disputes Act, 1947 is maintainable before the court or not.

28. Keeping in view the said question now I proceed to discuss the provision of law invoked by the applicant u/s 33(C) (2) of the Industrial Disputes Act, 1947 for claiming the reliefs. Sec.33(C)(2) of Industrial Disputes Act, 1947 reads as follows;

33-C(2).Recovery of money due from the employer: *“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)

29. So, on plain reading of said provision makes it clear that where any money is due to the workman from an employer, the workman can very well claim for recovery of the said money due. Therefore, the meaning of word 'entitled' is to be construed as determined or already adjudicated. Therefore, the Labour Court by sitting over the said provision cannot determine or adjudicate the benefits of applicant directly on the basis of the application filed u/s 33(C)(2). In the decision of **Hon'ble Supreme Court of India**, which is reported in **L.L.J 1995 between Municipal Corporation of Delhi v/s Ganesh Razak and another**, it is observed as follows;

"The power of the Labour Court under sec.33C(2) extends to interpretation of the awards or settlements on which the workmen's right rests, like the Executing Court's power to interpret the decree fro the purpose of the 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 of the basis of the claim if there be no prior adjudication or recognition of the same by the employer."

30. Further, in the judgment of **Hon'ble Supreme Court of India**, which is reported in **2008 LLR 765** between **H.P State Electricity Board and Another V/s Ranjeet Singh and ors**. It is observed as follows:

B: "INDUSTRIAL DISPUTES ACT, 1947- Sec.33C(2) Recovery of money due from an employer by the workman-Bonus-Entitlement-Could not be decided by Labour Court since such powers are vested with industrial Tribunal- It can be claimed by a workman-Only he has an existing right.

31. In the decision of **Hon'ble Supreme Court of India**, which is reported in **2022 LLR 251** between **Bombay Chemical Industries V/s Deputy Labour Commissioner and Anr.**, It is observed as follows:

"Sec.33C(2) of I.D.Act is like that of an executing court hence the Labour Court in its jurisdiction can only interpret the award or settlement on which the claim of the workman is based."

32. Therefore, in **M/s Bombay Chemical Industries Vs Deputy Labour Commissioner and Anr.**, case law supra the Hon'ble Supreme Court of India has clearly held that, the applicant cannot claim with respect to monetary benefit i.e.,

salary due from the respondents u/s 33(C)(2) of the Industrial Disputes Act, 1947, without prior adjudication and without establishing his pre-existing right in respect of the claim put forth by him. The labour court gets the jurisdiction to decide the application u/s 33(C)(2) only on the basis of award or settlement with respect to the claim of the applicant.

33. Therefore, in view of the above reasons, the claim petition u/s 33(C)(2) of the Industrial Disputes Act, 1947 is not maintainable claiming arrears of salary/wages, back wages and leave encashment without there being any award or settlement in support of the claim of the applicant. It is only when the entitlement has been earlier adjudicated or recognised by the employer it is treated as incidental to the Labour Court's power U/sec.33-C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution. Hence, by considering all the material facts and circumstances of the case and coupled with totality of the evidence available on record I am of opinion that the applicant is not made out any reasonable and justifiable grounds to grant reliefs as claimed in the application. Accordingly, I answer point No.1 in the **Negative**.

34. **Point-2:** In view of my findings on point-1, I proceed to pass the following-

ORDER

The application filed by the applicant u/s 33(C)(2) of I.D.Act, 1947 is hereby rejected.

Under the circumstances, I direct both parties to bear their own costs.

(Dictated to the stenographer on computer, revised, corrected and then pronounced by me in the open court on this the 20th day of May, 2026).

(B.K RAVIKANTHA)

District Judge and Presiding Officer,
Labour Court, Mysuru.

ANNEXURE

WITNESS EXAMINED FOR THE APPLICANT:

A.W.1: **H.M.Nagesh**

DOCUMENTS MARKED FOR THE APPLICANT:

Ex.A1: Letter of Additional Labour Commissioner dated.03.03.2025

Ex.A2: Copy of award in IID No.107/2006 before Labour Court, Mysuru.

Ex.A3: Copy of Writ Petition No.36902 of 2011

Ex.A4: Copy of Writ Appeal No.404 of 2022

Ex.A5: Copy of Appendix-II form 'A' application form for gratuity

WITNESSES EXAMINED FOR THE RESPONDENT:

RW.1: **Siddalinga Prasad S.G**

DOCUMENTS MARKED FOR THE RESPONDENT:

- Ex.R1: Copy of letter issued by the respondent management to applicant.
- Ex.R2: Copy of letter dated.04.12.2023 given by the applicant to the respondent management.
- Ex.R3: Copy of letter dated.11.12.2023 given by the applicant to the respondent management.
- Ex.R4: Copy of office order dated.07.12.2023.
- Ex.R5: Copy of office order dated.13.12.2023.
- Ex.R6: Copy of office order dated.02.05.2025.

(B.K RAVIKANTHA)

District Judge and Presiding Officer,
Labour Court, Mysuru.