

BEFORE D. S. KHEDEKAR, JUDGE, LABOUR COURT NO. 1,
AURANGABAD

Appln. IDA No. 17/2020

CNR NO. MHLC20000156-2020

Babasaheb Hiranman Khotkar

...Applicant

V/s

The Commissioner, Municipal Corporation,

Aurangabad and Anr.

...Opponents

ORDER BELOW EXH. C-3
(DTD. 08/08/2025)

1. This application is filed by opponent No.1 by raising preliminary objection of maintainability of application on the ground that there is no employer-employee relation between the applicant and opponent corporation. The present application filed under Section 33-C(2) of the Industrial Disputes Act, 1947 (in short I. D. Act) is not maintainable in absence of employer-employee relationship.

2. The applicant has filed reply thereon and claimed that the application is not maintainable as the principal employer is the opponent No. 1 and he is necessary party. Therefore, application is liable to be rejected.

3. On the basis of statement of both parties preliminary issue was framed on the application as follows and I have recorded my findings thereon with reasons as follows :

Sr. No.	ISSUES	FINDINGS
01	Whether present application is maintainable against opponent No.1 ?	Negatively
02	What order ?	As per final order

REASONS

AS TO ISSUE NO. 1 :

4. I have heard learned advocate for opponent and applicant at length.

5. The applicant has relied upon decision in the case of **Kartick Chandra Mahisha and others V/S Union of India and others Reported in 2021 LLR 810** wherein under section 21 (4) the contract labour (regulation and Abolition) Act 1970 held that the principal employer is liable for payment of wages to the contractors employees if contractor fails.

6. The another decision relied upon by the applicant in the case of **BSNL Nationalist Thika Workers Congress V/S Union of India and others reported in 2020 LLR 266** wherein it is held that when the principal employer to pay wages and it is his primary duty of contractor to pay the wages to its workmen if contractor fails to pay wages.

7. These case laws relied upon by the applicant and on going through it appears that these case laws are considered on the issue of wages and entitlement of wages by the workmen when the contractor

had employed workman and the principal employer is liable for payment of contractual amount and the objection was found untenable.

8. The opponent has relied upon the decision in the case of **Agricultural Produce Market Committee Solapur V/S Naganath Jothiram Godkhe and others reported in 2010 (3) SLR 158 Writ Petition No. 6384 of 1997** decided by Hon'ble Bombay High Court and it is held that employer employee relationship it's serious dispute and the application under section 33-C(2) of I. D. Act, 1947 is not maintainable and the applicants are having right to adopt appropriate proceedings to establish their rights.

9. The opponent has relied upon the decision render in the case of **M/S Bombay Chemical Industries V/S Deputy Labour Commissioner and anr reported in 2022 (1) Apex Court Judgment (SC) 557 IN Civil Appeal No.813 of 2022** where in the Hon'ble Supreme Court has held that industrial dispute under Section 10 and 33 and payment of differences of wages. The benefit sought under section 33 C 2 is necessarily pre existing benefit and serious disputed issue has to be decided and therein it is held that the Labour Court has no jurisdiction under section 33 C (2) of I D Act, 1947 to adjudicate dispute about entitlement of the claim of workman and therefore the claim of difference of wages claimed by the workman shall not be maintainable under section 33 C (2)of the Industrial Dispute Act, 1947 as held by the Hon'ble Supreme Court in the case of **Municipal Corporation of Delhi V/S Ganesh Razak and another reported in (1995) 1 SCC 235.**

10. In view of above mentioned decisions the contentions of the applicant in the application in the light of objection is required to be considered to find out the objection raised by the opponent. The applicant has claimed that opponent No. 1 is Municipal Corporation appointed applicant as Driver w. e. f. 10/07/2014 through opponent No. 2 who is local civil body and industry. The applicant was it's workman as defined under Section 2(s) of I. D. Act. The applicant has claimed that the applicant and opponent No. 2 has no relation whatsoever in nature and the opponent No. 1 was looking after work of applicant. The opponent No. 2 did not supervise or allotted work to the applicant and the monthly wages were received from the opponent No. 2 and it has been reflected in his saving account.

11. It is contended by the applicant that since joining of services with opponent No. 2 he was getting very meagre monthly wages. However, after 2015 he was not getting minimum wages and therefore, the applicant had enquired towards opponent No. 1 as regards wages but there was no satisfactory answer and the opponent No. 1 did not pay him therefore, the applicant has claimed that the labourers workers are to be secured in the enjoyment of minimum wages and required to be protected against exploitation of employer.

12. It is contended that the object of the Act is fixing minimum wages rate is clearly to prevent exploitation of labourer and the applicant is entitled for minimum wages for essential needs of the worker. However, the employers are taking undue advantage of poor condition of the applicant and therefore, the opponent No. 1 being local civil body is having responsibility to compare private company / employer to

implement the Act strictly. The applicant is working regularly and opponent not allowing leaves and no other facilities are given under the Labour Laws and therefore, the applicant has claimed the differences of wages in the present proceeding which he is entitled to get from the opponent as per annexure A and claimed the relief of entitlement of Rs. 3,96,480/- and sought relief of holding opponents jointly and severally liable to pay the said amount and seeking direction of 18% interest from the stage of amount due as shown in the annexure A till it's realization. In view of statement of applicant and considering the objection of opponent it is material to consider the provisions of Section 33-C(2) of the I. D. Act.

13. In view of controversy and considering the provisions of section 33 C (2) of the Industrial Disputes Act, 1947 is necessary.

The Section 33C(2) of the Industrial Disputes Act, 1947 prescribes that 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.

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.

14. On the basis of statement of applicant and the relief sought in the light of application by referring provisions of Section 33-C(2) of I. D. Act it appears that the applicant is claiming differences of minimum wages against the opponents and by virtue of statement claimed that the applicant and opponent No. 2 infact having no relation whatsoever in nature. The provisions of Section 33-C(2) of the I. D. Act specifies 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.

15. In view of statement of applicant it is clear that the relationship with the opponent No. 1 and employer-employee relationship with opponent No.2 is not specified in particular and also claimed that no relation with the opponent No. 2 in that context the relationship as claimed against the opponent No. 1 is disputed fact. The opponent No. 1 has claimed that no employer-employee relationship is between opponent No. 1 corporation and therefore, raised objection of maintainability of application.

16. In view of statement of applicant and relief claimed for holding jointly and several liability against opponent it is evident that the liability against opponents is not established and in that context the disputed issue of adjudication of liability is appears to be pending, therefore, the objection of opponent No. 1 as regards maintainability of application required to be considered from the decisions relied upon.

17. The opponent has relied upon the decision rendered in the case of Agricultural Produce Market Committee (Supra) is required to be considered. So also the relevant para of M/s Bombay Chemical Industries (Supra) is mentioned hereunder for better appreciation of provisions,

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 employer-employee 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 preposition 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 33 C (2) of the I D Act. It is further observed that the benefit sought to be enforced under Section 33 C (2) of the I D Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing 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 33 C (2) of the I D 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.

18. In view of statement of the applicant and relief claimed and decision referred herein above, it is apparent that the applicant is claiming adjudication of disputed issue of entitlement of claim of difference of wages and claiming relief of holding the opponents jointly and severally are liable to pay Rs. 3,96,480/- to the applicants. Applicant is also claiming directions of interest against opponent and claimed entitlement of relief in terms of prayer clause which is completely out of the purview of and scope of provisions under Section 33-C(2) of I. D. Act. There is no adjudication of existence of employer-employee relationship or right of differences of wages from pre-existing benefit or pre-existing right between the applicant and opponent and in absence of adjudication of disputed issues the application filed under Section 33-C(2) of I. D. Act is only in the nature of execution, application and Court is having jurisdiction to entertain application of an executing Court.

19. In view of decision of BSNL Nationalist Thika Workers Congress and others (supra) case though the primary duty of contractor to pay wages is hold and if the contractor fails to pay the wages the principal employer shall be liable for payment of wages and the principal employer is liable to pay wages if contractor fails. There is no dispute about the aforesaid propositions. However, the facts remains that the

relationship of employer and employee is disputed and there is no adjudication of claim of differences of wages amongst the parties and therefore, the claim of adjudication of differences of wages claimed by the applicant shall not be maintainable under Section 33-C(2) of the I. D. Act against the opponent No. 1. The Hon'ble Supreme Court in the case of M/s Bombay Chemical Industries (Supra) has decided the issue of maintainability and it is held that without prior adjudication or recognition of the disputed claim of the workman proceedings for computation of arrears of wages and or differences of wages claimed by the workman shall not be maintainable under Section 33-C(2) of the I. D. Act and the employee is required to initiate appropriate proceeding by way of reference and get his right crystalized and or adjudicated upon. In view of statement of applicant and relief claimed the application is not maintainable against the opponent No.1 and liable to be dismissed against opponent No. 1, consequently I answer this issue negatively and pass following order;

ORDER

1. The application is not maintainable against opponent No.1 in the present form under section 33 C (2) of Industrial Dispute Act,1947.
2. The application is dismissed against opponent No. 1.
3. Parties shall take note thereof.

Place: Aurangabad

Date: 08/08/2025

**(D. S. Khedekar)
Presiding Officer,
Labour Court-1, Aurangabad**