

LC 432/23

SURESH Vs. MCD

29.01.2024

Present: Sh. Intjar Ali, Ld. AR for the applicant/workman.

Sh. Manik Alhuwalia, Ld. AR for the management/MCD.

Sh. Amit Sharma, Assistant Sanitation Inspector, Narela Zone, MCD.

Calculation sheet filed by MCD. Copy supplied. The same has been accepted by AR for workman.

The present petition has been filed by applicant/workman **Sh. Suresh** claiming that **he** was employee of the management and management has not cleared dues pertaining to following heads:

- (a) Grade Pay 1800/-**
- (b) MACP Arrear**
- (c) 7th CPC Arrear**

The MCD/Management has filed service record and calculation sheet admitting the workman to be its employee and also admitting the details of outstanding dues under various heads: **(a) Rs. 44217/- grade Pay 1800/- (b) Rs. 56752/- MACP Arrear (c) Rs. 40140/- 7th CPC Arrear and thus, total amount Rs. 141109/-**

Statement of AR for the applicant has been recorded, separately, whereby he has admitted the correctness of calculation filed by the management and requested that matter may be disposed off on the basis of calculation given by the management.

Scope and ambit of Section 33-C(2) of I.D. Act has been discussed in para 13 of judgment titled “**Jeet Lal Sharma**

Vs. Presiding Officer, Labour Court-IV & Anr.” 2000 IV AD (Del) wherein Hon’ble High Court of Delhi after referring to a series of judgments of Hon’ble Apex Court titled (i) ***“Punjab National Bank Vs. K. L. Kharbanda” reported in 1962 (1) LLJ 234;*** (ii) ***“Central Bank of India Vs. P.S. Rajagopalan” reported in 1963 (2) LLJ 89;*** (iii) ***“Bombay Gas Company Limited Vs. Gopal Bhiva” reported in 1963 (2) LLJ 608;*** (iv) ***“Chief Engineer Mining, East India Coal Company Limited Vs. Rameshwar” reported in 1968 (1) Lab I.C.6 SC*** and (v) ***“Municipal Corporation of Delhi Vs. Ganesh Razak” reported in 1995 (1) SCC 335*** has observed:

“13. When the claim is based on adjudication or settlement it poses no difficulty. However there may be cases where the workman would be held entitled to receive the money as pre-existing right on the basis of the agreement between the employer and employee or as per established service conditions which have culminated into right in favour of the workman.....

It was also held by Hon’ble Apex Court that application under section 33-C(2) would be maintainable and jurisdiction of Labour Court will not be barred merely because employer has denied the same in case the right to get a particular benefit is included in the service conditions. Para 15 and 16 of judgment of Hon’ble High Court in Jeet Lal Sharma’s case (supra) w.r.t jurisdiction of Labour Court are reproduced below for reference:

“15. The point which is emphasized is that entitlement to receive money i.e. pre-existing right can be based on (1) adjudication (2) settlement (3) service conditions. If the right to get a particular benefit is there, the application u/s. 33-C(2) would be maintainable and jurisdiction of Labour Court will not be barred merely because employer has denied the same.”

“16. What is the meaning of the expression “entitlement to receive”. No doubt it is referable to pre-existing right. However where the workman claims a benefit flowing from a pre-existing and approaches the Labour Court u/s. 33-C(2) for computation of the right in term of money and the employer disputes the existence of the right, the Labour Court will have jurisdiction to determine the question whether the right exists and if the existence of right is established than to proceed to

compute the benefit flowing there from in terms of money or on its decisions recovery proceedings can start (New Taj Mahal Cafe Private Limited versus Labour Court reported in 1970 (2) LLN 51 and East India Coal Company Limited (supra). In deciding the maintainability of the application u/s. 33-C(2) what is to be looked at is the claim set up in the applications and not what the other side contends in its reply. The fact that the employer by his plea raises some dispute does not mean that jurisdiction of Labour Court to deal with the question is taken away."

Accordingly, application under Section 33 C(2) of ID Act, 1947 is therefore, allowed and management is directed to pay **Rs. 141109/-** to the workman/claimant **Sh. Suresh S/o Sh. Mange**. Needless to mention, if at any point of time, it is found that amount has already been paid or overpaid, the MCD would be at liberty to deduct said amount. Further, if at any point of time, it is found that due to some discrepancy, error due to incorrect fixation of pay or any emoluments, excess payment has been made, the applicant would be liable to refund the said amount to the MCD. The applicant would give an undertaking in this regard to the MCD. File be consigned to record room.

As prayed, copy of order be given dasti.

(Chander Mohan)
POLC-06: RADC/New Delhi
29.01.2024