

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 9406 of 2024**

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DHARMENDRA BHAI DAHYABHAI SOLANKI

Versus

NIRAV ENTERPRICE & ORS.

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Appearance:

MITTAL N PATEL(7614) for the Petitioner(s) No. 1

MR HAMESH C NAIDU(5335) for the Respondent(s) No. 3

MS HINA DESAI(1023) for the Respondent(s) No. 2

NOTICE UNSERVED for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK****Date : 17/11/2025****ORAL ORDER**

1. Present petition is filed by the petitioner under Articles 226 & 227 of the Constitution of India and under the provisions of the Industrial Disputes Act with the following prayers :-

“(A) Lordship may be pleased to allow this petition.

(B) Be pleased to direct the authority to pay the amount of Rs.2,01,376 in to the account of the petitioner.

(C) Be pleased to grant such and further relief that may be deemed fit for the interest of justice.”

2. The brief facts of the present case are as under :-

2.1 The petitioner had been working with the respondents for several years as a permanent Class-IV employee. In order to evade labour laws, the opponents frequently changed the name of their establishment. On 23.02.2017, the petitioner

was orally terminated from service without any reason, notice, or opportunity of hearing. Aggrieved by the illegal termination, the petitioner filed Reference No. 562/2017 in the Labour Court against the respondents.

2.2 The Labour Court, by its order dated 30.09.2021, passed an award in favour of the petitioner. Although the award was published and a Registered A/D notice was issued for its implementation, the respondents failed to comply with the award.

2.3 In view of the above, the petitioner has filed the present petition seeking recovery of 50% of his wages amounting to Rs. 2,01,376/- for the period from 23.03.2017 to 30.03.2022. The petitioner also prays for a declaration that the respondents have committed breach of the award and further seeks a direction to the respondents to pay Rs. 2,01,376/- with 9% interest.

3. Heard Ms. Mittal N. Patel, learned advocate for the petitioner, Ms. Hina Desai, learned advocate for respondent No.2 and Mr. Naidu, learned counsel for respondent Nos. 1 and 3.

4. Ms. Patel, learned advocate for the petitioner has submitted that the petitioner was a permanent Class-IV employee working with the respondents for several years. She submitted that the services of petitioner came to be terminated orally on 23.02.2017 without any reason and without affording any opportunity of hearing. She has

submitted that against such illegal termination, the petitioner filed Reference (LC) No. 562 of 2017 in which the Labour Court, vide award dated 30.09.2021, partly allowed the reference and directed respondent No.2 to reinstate the petitioner with continuity of service and to pay 50% of back wages.

4.1 Learned Counsel for the petitioner has submitted that despite the award attaining finality and despite repeated requests and service of Registered A.D. notices, the respondent failed to comply with the award. Therefore, the petitioner filed an application under Section 33(C)(1) of the Industrial Disputes Act for recovery of 50% back wages amounting to Rs. 2,01,376/- along with interest at 9% as directed in the award.

4.2 Learned counsel for the petitioner has submitted that the respondent No.2 was served with notices but chose not to appear, and therefore their right to file reply and lead evidence came to be closed. She has submitted that the Labour Court ought to have allowed the recovery application considering that the petitioner has been waiting for several years to get the small amount due under the award. She has submitted that the Labour Court failed to consider that the petitioner had specifically pointed out the period for which he claimed wages as per the award. She has submitted that the labour Court has dismissed the Recovery Application filed by the petitioner which is illegal, unjust and bad in law and therefore, the impugned order rejecting the recovery application deserves to be quashed and set aside.

5. On the other hand, learned advocates appearing for the respondents have submitted the Labour Court has rightly passed the impugned order and no interference is required in the present petition.

5.1 Learned advocates for the respondents have submitted that the Labour Court has rightly held that an application under Section 33(C)(1) is maintainable only when the amount due is a pre-determined, crystallised amount capable of straight recovery. Learned advocates for the respondents have submitted that in the present case, the award does not quantify the amount of back wages payable nor does it record the precise period for which wages are to be computed.

5.2 Learned advocates for the respondents have further submitted that the petitioner himself has not produced any calculation sheet or documentary proof showing how the amount of Rs. 2,01,376/- has been arrived at and therefore, the Labour Court has correctly held that without proper computation, recovery under Section 33(C)(1) is not maintainable.

5.3 Learned advocates for the respondents have submitted that when there is a dispute regarding the computation of wages, benefits or monetary dues, the only remedy available to the workman is to approach the Labour Court under Section 33(C)(2), which specifically empowers the Labour Court to undertake computation and in present case the petitioner has directly invoked Section 33(C)(1) without first

obtaining computation under Section 33(C)(2) and therefore, the impugned order does not call for any interference under Article 226 of the Constitution.

6. I have peruse the material and documents available on record. I have also gone through the impugned order passed by the Labour Court.

7. It clearly emerges that the Labour Court has assigned cogent, convincing and well-reasoned grounds for holding that the petition under Section 33C(1) was not maintainable. The said provision operates only as an execution or recovery mechanism, and presupposes the existence of a determinate, undisputed and pre-computed amount. In the present case, neither the Award nor the pleadings specify the quantum payable to the petitioner. The petitioner, admittedly, did not place any computation chart or documentary basis demonstrating how the claimed figure was arrived at. Thus, the Labour Court rightly held that the controversy involves adjudication and determination of the precise monetary entitlement, which squarely falls within Section 33C(2), and cannot be adjudicated in a summary 33C(1) proceeding. Moreover, the Labour Court has correctly observed that no power of computation is conferred under Section 33C(1), and unless the amount is first calculated and crystallised under Section 33C(2), issuance of a recovery certificate is legally impermissible. The finding of the Labour Court, therefore, is neither perverse nor contrary to record, but is perfectly in line with the statutory framework and settled judicial principles.

8. It is worthwhile to refer to the decision of the Hon'ble Supreme Court in the case of **State Bank Of India Vs. Ram Chandra Dubey** reported in **(2001) 1 SCC 73** wherein the Hon'ble Supreme Court has held and observed in para - 8 as under:-

"8. The principles enunciated in the decisions referred by either side can be summed up as follows :

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 Act. The benefit sought to be enforced under Section 33C(2) of the 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 33C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workmen as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages."

9. This Court is of the opinion that the present case falls in second part of the observation made by the Apex Court as observed in aforesaid para - 8 which is subsequently referred to and relied upon on many decisions. At this juncture, it is pertinent to refer to the decision of the Hon'ble Supreme Court in the case of **Bombay Chemical Industries Vs. Deputy Labour Commissioner** reported in **(2022) 5 SCC 629** wherein the Hon'ble Supreme Court has, by relying upon its earlier decision in the case of **Union of India Vs. Kankuben, (2006) 9 SCC 292**, explained the scope of Section 33C(2) of the Act i.e. recovery of money due from the employer and the jurisdiction of the Labour Court and clarified the principle and made relevant observations in para 7 to 13 more particularly para 9. Para 9 of the decision reads as under:-

"9. 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 ID Act. It is further observed that the benefit sought to be enforced under Section 33-C (2) of the ID 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 ID Act while the latter does not."

10. It is worthwhile to refer to Section 2(rr) of the Act which reads as under:-

"2(rr) "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 food grains 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;]"

11. It is profitable to refer to the following decisions of the Hon'ble Supreme Court as well as this Court.

- (1) **Regional Manager, Bank Of Baroda Vs. Gitaben Haribhai Darji Deceased Through Her L/r** reported in **2006 (1) CLR 613**.
- (2) **President, Bhavnagar District Co-operative Sangh Versus Dhirendra Pritamlal Parekh** reported in **2023 (4) GLR 2478**.
- (3) **Union Of India Vs. Kankuben (Dead) By Lrs.** reported in **(2006) 9 SCC 292**.
- (4) **State Of Uttar Pradesh Vs. Brijpal Singh** reported in **(2005) 8 SCC 58**;
- (5) **Sanskruit Education Society Vs. Tejas Chhotlal Mishra** rendered by the Coordinate Bench of this Court in **Special Civil Application No. 233 of 2018 and allied matters** dated 10.03.2022.

12. In the case of **Ganesh Razak** (supra), the Hon'ble Supreme Court has held and observed in para - 8 as under:-

"8. Reference may be made first to the Constitution bench decision in central Bank of India Ltd. V/s. P.S. Rajagopalan on which Shri Rao placed heavy reliance. That was a case in which the question of maintainability of proceedings under Section 33-C(2) of the Act was considered in a claim made by the workmen on the basis of the Sastry Award. The employer disputed the claim of the workmen on several grounds including the applicability of Section 33-C(2) of the Act. It was urged that since the applications involved a question of interpretation of the Sastry Award, they were outside the purview of Section 33-C(2) because interpretation of awards or settlements has been expressly provided for by Section 36-A. This objection was rejected. This court pointed out the difference in the scope of Section 36-A and Section 33-C(2) indicating that the distinction lies in the fact that Section 36-A is not concerned with the implementation or execution of the award whereas that is the sole purpose of Section 33-C(2); and whereas Section 33-C(2) deals with cases of implementation of individual rights of workmen falling under its provisions. Section 36-A deals merely with a question of interpretation of the award where a dispute arises in that behalf between the workmen and the employer and the appropriate government is satisfied that the dispute deserves to be resolved by reference under Section 36-A. In this context, this court also indicated that the power of the Labour court in a proceeding under Section 33-C(2) being akin to that of the Executing court, the Labour court is competent to interpret the award or settlement on which a workman bases his claim under Section 33-C(2), like the power of the Executing court to interpret the decree for the purpose of execution. Relevant extract from that decision is as under:

"Besides, there can be no doubt that when the Labour court is given the power to allow an individual workman to execute or implement his existing individual rights, it is virtually exercising execution powers in some cases, and it is well settled that it is open to the Executing court to interpret the decree for the purpose of execution. It is, of course, true that the Executing court cannot go behind the decree, nor can it add to or subtract from the provision of the decree. These limitations apply also to the Labour court; but like the Executing court, the Labour court would also be competent to interpret the award or settlement on which a

workman bases his claim under Section 33-C(2). Therefore, we feel no difficulty in holding that for the purpose of making the necessary determination under Section 33-C(2), it would, in appropriate cases, be open to the Labour court to interpret the award or settlement on which the workman's right rests."

This decision itself indicates that the power of the Labour court under Section 33-C(2) extends to interpretation of the award or settlement on which the workman's right rests, like the Executing court's power to interpret the decree for the purpose of 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 or the basis of the claim if there be no prior adjudication or recognition of the same by the employer. This decision negatives instead of supporting the submission of learned counsel for the respondents."

13. In the case of **Brijpal Singh** (supra), the Hon'ble Supreme Court has held and observed in paras - 8, 10, 11 and 13 as under:-

"8. In the background facts of this case, the following questions of law arise for considering by this Court:

(1) Whether the High Court erred in allowing the order passed by the Labour Court filed by the respondent u/s. 33C(2) of the Industrial Disputes Act?

(2) Whether the pendency of the Writ Petition No. 15172 of 1987 filed by the respondent herein, same being not finally disposed of, the liability to pay, if any to the concerned workman u/s. 33C(2) of the I.D. Act, does arise or not?

(3) Whether the High Court gravely erred in allowing the salary and bonus to the respondent, although he has not attended the office of the appellant after the stay order passed by the High Court dated 28.10.1987?

(4) Whether the Labour Court has jurisdiction to entertain and decide the undetermined claim?

10. It is well settled that the workman can proceed u/s. 33C(2) only after the Tribunal has adjudicated on a

complaint u/s. 33A or on a reference u/s. 10 that the order of discharge or dismissal was not justified and has set aside that order and reinstated the workman. This Court in the case of Punjab Beverages Put. Ltd. V/s. Suresh Chand, 1978 2 SCC 144 held that a proceeding u/s. 33C(2) is a proceeding in the nature of execution proceeding in which the Labour Court calculates the amount of money due to a workman from the employer, or, if the workman is entitled to any benefit which is capable of being computed in terms of money, proceeds to compute the benefit in terms of money. Proceeding further, this Court held that the right to the money which is sought to be calculated or to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between the industrial workman, and his employer. This Court further held as follows:

"It is not competent to the Labour Court exercising jurisdiction u/s. 33C(2) to arrogate to itself the functions of an industrial tribunal and entertain a claim which is not based on an existing right but which may appropriately be made the subject matter of an industrial dispute in a reference u/s. 10 of the Act."

11. *In the case of Municipal Corporation of Delhi V/s. Ganesh Razek & Anr., 1995 1 SCC 235, this Court held as under:-*

"12. The High Court has referred to some of these decisions but missed the true import thereof. The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding u/s. 33-C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compare the benefit so adjudicated on that basis in exercise of its power u/s. 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity required interpretation that the interpretation is treated as incidental to the Labour Court's power u/s. 33-C(2) like that

of the Executing Court's power to interpret the decree for the purpose of its execution.

13. In these matters, the claim of the respondent-workmen who were all daily-rated/casual workers, to be paid wages at the same rate as the regular workers, had not been earlier settled by adjudication or recognition by the employer without which the stage for computation of that benefit could not reach. The workmen's claim of doing the same kind of work and their entitlement to be paid wages at the same rate as the regular workmen on the principle of "equal pay for equal work" being disputed, without an adjudication of their dispute resulting in acceptance of their claim to this effect, there could be no occasion for computation of the benefit on that basis to attract Sec. 33-C(2). The mere fact that some other workmen are alleged to have made a similar claim by filing writ petitions under Art. 32 of the Constitution is indicative of the need for adjudication of the claim of entitlement to the benefit before computation of such a benefit could be sought. Respondents claim is not based on a prior adjudication made in the writ petition filed by some other workmen upholding a similar claim which could be relied on as an adjudication enduring to the benefit of these respondents as well. The writ petitions by some other workmen to which some reference was casually made, particulars of which are not available in these matters, have, therefore, no relevance for the present purpose. It must, therefore, be held that the Labour Court as well as the High Court were in error in treating as maintainable the applications made u/s. 33-C(2) of the Act by these respondents."

13. *Thus it is clear from the principle enunciated in the above decisions that the appropriate forum where question of back wages could be decided is only in a proceeding to whom a reference u/s. 10 of the Act is made. Thereafter, the Labour Court, in the instant case, cannot arrogate to itself the functions of an Industrial Tribunal and entertain the claim made by the respondent herein which is not based on an existing right but which may appropriately be made the subject matter of an industrial dispute in a reference u/s. 10 of the I.D. Act. Therefore, the Labour Court has no jurisdiction to adjudicate the claim made by the respondent herein u/s. 33C(2) of the I.D. Act in an undetermined claim and until such adjudication is made by the appropriate*

forum, the respondent-workman cannot ask the Labour Court in an application u/s. 33C(2) of the I.D. Act to disregard his dismissal as wrongful and on that basis to compute his wages. It is, therefore, impossible for us to accept the arguments of Mrs. Shymala Pappu that the respondent-workman can file application u/s. 33C(2) for determination and payment of wages on the basis that he continues to be in service pursuant to the said order passed by the High Court in Writ Petition No. 15172 of 1987 dated 28.10.1987. The argument by the learned counsel for the workman has no force and is unacceptable. The Labour Court, in our opinion, has erred in allowing the application filed u/s. 33C(2) of the I.D. Act and ordering payment of not only the salary but also bonus to the workman although he has not attended the office of the appellants after the stay order obtained by him. The Labour Court has committed a manifest error of law in passing the order in question which was rightly impugned before the High Court and erroneously dismissed by the High Court. The High Court has also equally committed a manifest error in not considering the scope of Sec. 33C(2) of the I.D. Act. We, therefore, have no hesitation in setting aside the order passed by the Labour Court in Misc. Case No. 11 of 1993 dated 23.08.1995 and the order dated 9.01.2002 passed by the High Court in C.M.W.P. No. 36406 of 1995 as illegal and uncalled for. We do so accordingly."

14. This Court finds that in view of the order passed by the Co- ordinate Bench of this Court in Special Civil Application No. 223 of 2018 with allied matters dated 10.03.2022, this Court is of the opinion that unless and until there is any pre existing right decided by the Labour Court there is no question of recovery under the provisions of Section 33-C (2) of the Industrial Disputes Act, In the said decision, this Co- ordinate Bench of this Court has considered the judgment of the Hon'ble Apex Court from 1995 onwards. Section 33-C(2) of the Industrial Disputes Act, which reads as under :-

*"[33C. Recovery of Money Due from an Employer-
(1) Where any money is due to a workman from an employer*

under a settlement or an award or under the provisions of chapter 5A or chapter 5B, the workman himself or any other person authorised by him in writing in this behalf, or, in the case, of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the collector who shall proceed to recover the same in the same manner as an arrear of land revenue: Provided that every such application shall be made within one year from the date on which money became due to the workman from the employer; Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the application had sufficient cause for not making the application within the said period.

(2) 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. 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."

15. This Court has also relied on the judgment of the Hon'ble Apex Court in the case of ***Bombay Chemical Industries Vs. Deputy Labour Commissioner and another reported in (2022) 5 SCC 629***", in view of the above, the present petition is devoid of merits and deserves to be dismissed.

16. Under such circumstance, the Labour Court was justified while rejecting the application after considering the document as well as evidence produced before it, the Labour Court has not committed any error.

17. The present petition is dismissed. Notice is discharged. No order as to costs. Record and proceedings be sent back to the concerned Court forthwith.

(HEMANT M. PRACHCHHAK,J)

SURESH SOLANKI

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: SURESHKUMAR MOTIBHAI SOLANKI(HC00208), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 20/11/2025 17:17:38