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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 81 OF 2014

Shri. Vallabh Bhobe,
Son of late Waman B. Bhobe,
Age-67 years,
Occupation-Businessman,
Resident of R/o H. No. 154,
Damodar Prassad,
Governor Pestana Road,
Panaji, Goa.

... Petitioner

VERSUS

1. State of Goa,
The Secretariat,
Through Chief Secretary,
Porvorim, Goa.
2. Department of Labour and Employment,
Through the Commissioner,
With office at Shramshakti Bhavan,
Patto Plaza, Panaji, Goa.
3. The Collector,
North Goa,
Through Head of Taluka Office,
With office at Collectorate Building,
Panaji, Goa.
4. Shri Madhu Shirodkar,

Major of age,
H. No. 603,
Reis Magos,
Bardez, Goa.

5. The Labour Court-II,
Government of Goa
With office at First Floor,
Shramshakti Bhavan,
Patto Plaza, Panaji, Goa.

... Respondents

WITH
WRIT PETITION NO. 82 OF 2014

Shri. Vallabh Bhobe,
Son of late Waman B. Bhobe,
Age-67 years,
Occupation-Businessman,
Resident of R/o H. No. 154,
Damodar Prasad,
Governor Pestana Road,
Panaji, Goa.

... Petitioner

VERSUS

1. State of Goa,
Through Chief Secretary, Secretariat
Porvorim, Goa.
2. Department of Labour and Employment,
Through the Commissioner,
With office at Shramshakti Bhavan,
Panaji, Goa.

3. The Collector,
North Goa,
Through Head of Taluka Office,
With office at Collectorate Building,
Panaji, Goa.
4. Shri Anand Narayan Pai (deceased through his LR),
Major of age,
H. No. 934,
Socorro, Porvorim, Goa.

4(a) Mr. Mayuresh Vinayak Pai,
Major of age,
Resident of H. No. 934,
Ambrian, Socorro,
Porvorim, Bardez, Goa.
(Amendment carried out as per
order dated 27.02.2026 passed in
MCA No. 253/2026(F))
5. The Labour Court-II,
Government of Goa
With office at First Floor,
Shramshakti Bhavan,
Patto Plaza, Panaji, Goa. ... Respondents

Mr. Sudesh Usgaonkar, Senior Advocate with Ms. Marie Rosette Pereira, Advocate for the Petitioner.

Mr. L. Raghunandan, Advocate under Legal Aid Scheme for Respondent No. 4 in WP No. 81/2014.

Mr. Amey Phadte, Advocate for Legal Representatives of Respondent No. 4 in WP No. 82/2014.

Ms. Susan Linhares, Additional Government Advocate for Respondent Nos. 1 to 3 and 5.

CORAM:- VALMIKI MENEZES, J.

DATED :- 27th FEBRUARY, 2026

ORAL JUDGMENT:

1. Heard learned Advocates for the parties.
2. Rule. Rule is made returnable forthwith; at the request of and with the consent of learned Advocates for the parties, the matter is finally heard and disposed of. Learned Advocate Mr. Mr. L. Raghunandan, waives service for Respondent No. 4 in WP No. 81/2014 under Legal Aid Scheme, learned Advocate Mr. Amey Phadte, waives service for Legal Representatives of Respondent No. 4 in WP No. 82/2014 and learned Additional Government Advocate Ms. Susan Linhares waives service for Respondent Nos. 1 to 3 and 5.
3. The challenge in these petitions is to two Judgments and Orders, both passed on 02.09.2010, by the Labour Court II. The applications, under Section 33-C (2) of the Industrial Disputes Act, 1947 claiming certain sums of money from M/s Dukle Bhobe & Co., purporting to be the employer, has been allowed.

4. The main grounds raised by the Petitioner in these Petitions are that the Petitioner's establishment was not an industry and the Respondent was not a workmen as defined under Section 2(s) of the Industrial Disputes Act (ID act); further, since the establishment was registered as a shop, under the Goa Shops and Establishments Act, 1973, the persons claiming to be workmen had remedies under that Act, thus the Judgments and Orders passed by the Industrial Tribunal was without jurisdiction. Further, the Petitioner has challenged the maintainability of the Respondents Applications under Section 33-C (2) of the Industrial Disputes Act, contending that the Industrial Court could not decide the Respondents entitlement to receive the said amounts as these provisions do not empower such an inquiry to be conducted under Section 33-C(2), as this constitutes an independent "dispute" which requires to be adjudicated on a reference.

FACTS

~~5. It is the case of the Petitioner that the Respondents were working in an establishment, which is a shop known as "M/s Dukle Bhohe & Co." of which the~~

Correction carried
out as per order
dated 07.05.2026.
Sd/-

5. FACTS IN WRIT PETITION NO. 81/2014

It is the case of the Petitioner that the Respondent No.4 was working in an establishment, which is a shop known as "M/s Dukle Bhobe & Co." That the Respondent No.4 was appointed as Sales Assistant with effect from 01/02/1966. The letter of appointment was signed on 26/08/1976 by Partner, Shri Gurudas Pai. At the relevant time the Petitioner was not a Partner in the said Firm. The Respondent No.4 tendered his resignation on 31/12/1996 to the said Firm. He resigned from the service of the said Firm for better prospects. He requested settlement of all dues payable to him for his previous years of service. The resignation of Respondent No.4 was accepted by the said Firm which is clear from the endorsement made on the said letter of resignation of Respondent No.4. The allegation of Respondent No. 4 before the Court below that he has worked with the said Firm till the year 2008 is patently false and untrue to the knowledge of the Respondent No. 4. Consequently, the statement about his last salary being Rs. 3000/- is also a false statement. That after his resignation from the said Firm, the Respondent No.4 was gainfully employed in another Firm, Sani-Ply Centre in which he has in fact been working till 2006. The Respondent No.4 filed an application dated 05.01.2010 under section 33-C (2) of the ID Act for computation of the amount due to him i.e Rs. 1,13,250/-.

Correction carried
out as per order
dated 07.05.2026.

Sd/-

FACTS IN WRIT PETITION NO.82/2014

It is the case of the Petitioner that the Respondent No.4 was working in an establishment, which is a shop known as "M/s Dukle Bhobe & Co." of which the Petitioner was one of the partners since 18.10.1979 as an Assistant Salesman, and retired on 01.09.2008. That his last drawn salary is Rs.2800/- which was paid to him on 31/08/2008. The Respondent No.4 vide his letter dated 12.01.2009, requested the Commissioner of Labour and Employment, to look into the issue of payment of their retirement benefits, gratuity and other payments due. Since no action was taken by the said Commissioner, the Respondent No.4 filed an application dated 05.01.2010 under section 33-C (2) of the ID Act for computation of the amount due to him i.e Rs.85575/-.

Correction carried
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Sd/-

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~~Petitioner was one of the partner since 18.10.1979 both
as Assistant Salesmen, and retired on 01.09.2008.
Thereafter the Respondents vide their letter dated
12.01.2009, requested the Commissioner of Labour and
Employment, to look into the issue of payment of their
retirement benefits, gratuity and other payments due.
Since no action was taken by the said Commissioner, the
Respondents filed an application dated 05.01.2010
under section 33-C (2) of the ID Act for computation of
the amount due to them i.e Rs.1,13,250/- to Madhu
Shirodkar and Rs.85575/- to Anand Narayan Pai.~~

6. The Petitioner then avers, that from the record of the Labour Court, it transpires that the Court issued notices to the said Firm on 22.03.2010 which according to the Roznama, were refused. From the record, on 27.04.2010, the Respondents filed their amended Claim statement; notices on the same were issued to the firm, however, the same were again treated as refused. Since no appearance was put in by the Firm, the Labour Court proceeded ex-parte against the Firm, framed issues on 23.07.2010, took the workmen's Affidavit in evidence on record on the next date i.e. 30.07.2010 and closed

cross examination on the same day and passed the Judgments and Orders on 02.09.2010. By these Judgments and Orders, the Firm was directed to pay the Respondent Madhu an amount of Rs.1,23,490 and to Anand an amount of Rs.93,767/- towards gratuity, yearly increment and encashment of earned leave.

7. Subsequently the Respondents filed applications for recovery under Section 33-C (2) of the ID Act dated 21.01.2011 to the Commissioner of Labour against the Firm and Employment against the Petitioner for non-payment of the dues awarded by the Labour Court with the address of the Firm being shown as "Near Café Real, M.G. Road, Panaji, Goa". Later on, the workmen filed an application dated 15.10.2013, before the Labour Commissioner giving the residential address of the partner of the Firm with the Petitioner herein, where the Petitioner was served with a notice from the Labour Commissioner and the same was intimated to the Petitioner vide letter dated 15.11.2013; vide his reply dated 28.11.2013 the Petitioner informed the Commissioner that he was not aware of the impugned Judgments and Orders.

8. The record reveals that the Labour Commissioner issued a Recovery Certificate against the Firm on 14.01.2014 though particulars of the defaulters in the certificate are shown to be the Petitioners. This was followed by a Demand Notice being issued to the Petitioner by the Collector and the Land Revenue Code on 23.01.2014, pursuant to which the present petition was filed on 10.02.2014, after obtaining the records from the Industrial Tribunal, challenging both the Judgments and Orders, the Recovery Certificates and the notices of Demand.

9. The three issues that arise for determination in this petition are the following:

A. Whether the impugned Judgments and Orders passed by the Labour Court are without jurisdiction, in view of the fact that the establishment was one registered under the Goa Shops and Establishment Act, 1973?

B. Whether the Industrial Tribunal had the jurisdiction to pass impugned Judgments and Orders under Section 33-C (2) of the ID Act?

C. Whether the Judgments and Orders were passed without proper notice to the Petitioner and is contrary to the principles of natural justice?

10. Perusal of the application under Section 33-C (2) of the Act, would show that the two employees claim that the establishment M/s Dukle Bhobe & Co. was a Firm running a shop. The affidavit in evidence of the workmen specifically states so, and in paragraph No. 4 thereof, the workmen claim gratuity as calculated under the Goa Shops and Establishment Act, 1973. This stand of the workmen itself points to the fact that the establishment run by the Firm was a shop, covered under the provisions of the Goa Shops and Establishments Act, 1973 and was not an industry as defined under the ID Act. Further, it was nowhere the case of the workmen in their pleadings or by way of evidence that the establishment was an industry to confer jurisdiction on the Industrial Tribunal to entertain their application as an Industrial Dispute or as a dispute for the determination of amounts due under Section 33-C (2) of the ID Act.

11. The Goa Shops and Establishments Act, 1973, defines an employee in Sub Section (7) of Section 2 thereof to be a person employed in connection with any establishment which falls outside the scope of the Factories Act. The Goa Shops and Establishments Act, 1973, under Section 43, provides for payment of Gratuity and for the mode of recovery of unpaid wages. The said Act also provides for the Forum appointed for adjudication of such claims under Section 42. Thus, this Act is

a self-contained code which provides for a mechanism by which non-payment of dues under the Act can be enforced. Obviously, therefore, the workmen ought to have approached the Forum provided under the Act and could not have applied for recovery of wages and gratuity under the Industrial Disputes Act. There was therefore no jurisdiction vested in the tribunal to pass the Award. Point A for determination is therefore answered accordingly.

12. Point B for determination is whether the Industrial Tribunal had the jurisdiction to pass impugned Judgments and Orders under Section 33-C (2) of the ID Act. Section 33-C of the said Act reads as under:

“33C. Recovery of money due from an employer:

(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.]”

13. Sub Section 1 of Section 33-C empowers the appropriate Government to issue a certificate to the Collector for recovery of an amount due to a workmen from an employer under a Settlement or an Award or under provisions of Chapter V A or V B. Chapter V A and V B deals with rights of workmen during a Layoff or if Retrenched and the compensation payable to them as a result. Chapter V B is a special provision which applies to the cases of Layoff, Retrenchment or Closure of a specific establishment in which not less than 100 workmen are employed per working day for the preceding 12 months.

In the present case, neither of the workmen claimed that the establishment is one to which Chapter V A and V B would apply for the obvious reason that it was a shop, nor do they claim that the amounts sought to be recovered by them are due under an Award or Settlement.

14. Since the amounts claimed, pertain to payments of gratuity, yearly increment and encashment of earned leave, and the application has been filed under sub section 2 of section 33C, the question arises as to whether the workman are automatically entitled to receive such amount or benefit or whether the same is mere question of computation, based upon some pre-existing right, such as an Award or settlement. The evidence of the workman does not state that these were pre-

existent benefits or amounts but in fact make claim that these would be due, since increments to the workman were due prior to their retirement. If this was the workman's case, this is not a case for computation of the benefit on an undisputed right, but this is a claim raising an independent industrial Dispute, since the tribunal would first have to adjudicate the rights of the workman to claim such increment or gratuity to be calculated on such demand of increment.

15. The Supreme Court has specifically dealt with the powers in jurisdiction of the Tribunal under section 33-C (2) in ***State of UP and Anr V/s Brijpal Singh***¹, where, after examining the provisions it has held as under:

“10. It is well settled that the workman can proceed under Section 33-C(2) only after the Tribunal has adjudicated on a complaint under Section 33-A or on a reference under Section 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 (P) Ltd. v. Suresh Chand held that a proceeding under Section 33-C(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

¹ (2005) 8 SCC 58

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: (SCC p. 150, para 4)

"It is not competent to the Labour Court exercising jurisdiction under Section 33-C(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 under Section 10 of the Act."

11. In the case of Municipal Corpn. of Delhi v. Ganesh Razak this Court held as under: (SCC pp. 241-42, paras 12-13)

"12. The High Court has referred to some of these decisions but has 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 entitlements not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33-C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 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 requires interpretation that the interpretation is treated as incidental in the Labour Court's power under Section 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 d 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 e of their claim to this effect, there could be no occasion for computation of the benefit on that basis to attract Section 33-C(2). The mere fact that some other workmen are alleged to have made a similar claim by filing writ petitions under Article 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 petitions filed by some other workmen upholding a similar claim which could be relied on as an adjudication ensuring 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 9 that the Labour Court as well as the High Court were in error in treating as maintainable the applications made under Section 33-C(2) of the Act by these respondents."

16. *State of UP* (supra) makes reference to an earlier judgement of the Supreme court in *Municipal Corporation of Delhi V/s Ganesh Razak and Another*², which interprets the provision of section 33-C (2) holding that the Industrial Tribunal cannot adjudicate, the dispute of entitlement for basis

² (1995) 1 SCC 235

of claim of the workman and such claim can be restricted only to computation of an accepted benefit. The relevant paragraphs are quoted below:

“ 8. Reference may be made first... ..

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.

9. Another decision on the point is Bombay Gas Co. Ltd. v. Gopal Bhiva wherein also Gajendragadkar, J., (as he then was) speaking for the Bench, referring to the above Constitution Bench decision, stated that the proceedings contemplated by Section 33-C(2) are analogous to execution proceedings and the Labour Court, like the Executing Court in the execution proceedings governed by the Code of Civil Procedure, would be competent to interpret the award on which the claim is based. It is obvious that the power of the Executing Court is only to implement the adjudication already made by a decree and not to adjudicate a disputed claim which requires adjudication for its enforcement in the form of decree. The Executing Court, after the decree has been passed, is however competent to interpret the decree for the purpose of its implementation. This position was settled by the above Constitution Bench decision and has been the consistent view of this Court ever since then.”

17. For reasons stated in the aforementioned paragraphs, the Impugned award of the Industrial Tribunal, clearly adjudicates the basis of claim of the workmen who state their entitled to yearly increment and encashment of earned leave and higher gratuity based on such increments. The Award has clearly entered into the arena of adjudication of an Industrial Dispute which can be done only on a reference made by the Appropriate Government under section 10 of the ID act. the award is therefore totally without jurisdiction.

18. The last point for determination is whether the Judgments and Orders were passed without proper notice to the Petitioner and is contrary to the principles of natural justice. The record of the Industrial Tribunal has endorsed on the proceeding sheets that the partnership firm was served on 05.04.2010, since it had refused service. This was treated as good service. In the affidavit in reply of the workmen before this Court, the workmen states that the Petitioner is one of the partner of the Firm and since his retirement benefits were not settled by the Petitioner he wrote a letter on 12.01.2009 to the labour Commissioner to facilitate the payment of his dues. The documents annexed to the affidavit are the proceedings sheets of the conciliation of the proceeding before the Labour Commissioner which commenced on 22.06.2009 and in which

the Labour Commissioner issued notice to all the partners including the Petitioner.

19. The affidavit suggests that the three partners refused to sign the cheques for the amount due. With the affidavit, the reply of the Petitioner dated 12.03.2009 has been produced, wherein, at para 5, the Petitioner had stated that the partnership firm was dissolved on 18.06.2008 under a notice of dissolution, the partnership being at will and the dissolution of the partnership firm was also recorded by the Registrar of Firms. The affidavit also produces Form VII filed under Section 63(1) of the Partnership Act intimating dissolution of the Firm to the Registrar of Firms, which forms the record of the Assistant Labour Commissioner. The extract of the Register of the Firm is also part of the record of this petition, wherein the Registrar of Firms has endorsed on 18.11.2008, the dissolution of the Firm. Thus, it was clearly known to the workmen that the Firm stood dissolved, yet the application under Section 33-C (2) was filed before the Labour Court against the Firm, without impleading any of the partners, which included the Petitioner.

20. Even if the Industrial Tribunal did not possess the jurisdiction to entertain the application, the same was filed against a partnership firm, all of its partners, even if alive, were required to be impleaded and given notice, but much worse, when the partnership was known to have been dissolved, prior

to the commencement of the proceeding, it was really all three partners of the dissolved firm, against whom a claim could have been made. The Petitioner not having been impleaded or heard, the impugned Judgments and Orders have been passed without any notice to the Petitioner and is therefore, passed contrary to the principles of natural justice.

Correction carried
out as per order
dated 07.05.2026.
Sd/-

21. For all the aforementioned reasons, the impugned ~~passed by the Presiding Officer, Labour Court-II under the Industrial Disputes Act, 1947~~ Judgments and Orders dated 02.09.2010[↑] are quashed and set aside. Consequently, the Recovery Certificate dated ~~issued by Respondent No. 2~~ 14.01.2014[↑] and Notice of Demand dated 23.01.2014 issued by Respondent No. ³2 ~~i.e. the Labour Commissioner~~ are also quashed and set aside.

22. Rule is made absolute in terms of prayer Clause (a), (b) and (c) of the petition. This Judgment shall however not come in the way of the workmen enforcing their claim, if legally permissible in an appropriate forum.

VALMIKI MENEZES, J.