IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

LPA No. 458 of 2012

Date of decision: 25.04.2026

The Chairman-cum-Managing Director, Cement Corporation of India & Anr.

…Appellants

Versus

Central Government Industrial Tribunal-cum-Labour Court & Ors.

…Respondents

Coram

The Hon'ble Mr. Justice G. S. Sandhawalia, Chief Justice.

The Hon'ble Mr. Justice Bipin C. Negi, Judge.

Whether approved for reporting? Yes.

For the Appellants: Mr. Bhuvnesh Sharma, Senior Advocate with Mr. Parav Sharma, Mr. Rupesh Kumar and Avnish Mandhotra, Advocates.

For the Respondents: Mr. Desh Raj Thakur, Advocate, for respondent No. 2.

G. S. Sandhawalia, Chief Justice (Oral)

In present Letters Patent Appeal, consideration is sought of the judgment passed by the learned Single Judge in ***CWP No. 7430 of 2010***, titled as ***The Chairman-cum Managing Director, & Anr. vs. Central Government Industrial Tribunal-cum-Labour Court & Ors.***, decided on 13.01.2012, wherein the award dated 17.08.2010, passed by the Central Government Industrial Tribunal-cum-Labour Court has been upheld.

2. The reasoning given by the learned Single Judge to come to the conclusion was that the proceedings which had been initiated by way of Section 33-C(2) of the Industrial Disputes Act, 1947 (for short "***the Act***") were maintainable, which was an objection taken by the management as such and also canvased before this Court again. Resultantly, while referring to the plethora of judgments i.e. ***Punjab National Bank Ltd. vs. K. L. Kharband, AIR 1963 SC 48, The Central Bank of India Ltd. vs. P. S. Rajagopalan etc., AIR 1964 SC 743, State Bank of Patiala vs. Ram Pakash & Anr., AIR 1966 SC 1665, Chief Mining Engineer, M/s East India Coal Co. Ltd., Bararee Colliery Dhanbad vs. Rameshwar & Ors., AIR 1968 SC 218, Wages Inspector, Ujjain vs. Surajmal Mehta, Director, The Barnagar Electric Supply and Industrial Co. Ltd. & Anr, AIR 1969 SC 590, Central Inland Water Transport Corporation Ltd. vs. The Workmen and Anr, AIR 1974 SC 1604, Central Bank of India vs. Sirir Kumar Shaw, AIR 1976 SC 929, Namer Aliu Choudhary & Ors. vs. The Central Inland Water Transport Corporation Ltd. & Anr., (1977) 4 SCC 575, Municipal Corporation of Delhi vs. Ganesh Razak & Anr (1995) 1 SCC 235, Nizajmuddin Suleman etc. vs. The New Shorrock Spg and Mfg. Mills Co. Ltd. Nadiad & Anr. etc, 1980 LAB I.C. 397, U.P. State Road Transport Corporation vs. Birendra Bhandari (2006) 10***

SCC 211, Bharat Earth Movers Ltd., Mysore vs. Gangaramaiah & Ors. 2007 (114) FLR 700, Baburao P. Tawade & Ors. vs. Hes Ltd. Bombay & Ors. 1995 11 CLR 81, M/s Muir Milla, Kanpur vs. P.O. Labour Court (IV) Kanpur and Ors. 1997 (76) FLR and Indian Plywood Manufacturing Company Ltd. vs. Commissioner of Labour and Ors., 2000 (2) L.L.N. 677, the learned Single Judge came to the conclusion that the application was very much maintainable and upheld the award of the Labour Court.

3. Learned counsel for the appellant has relied upon the recent judgment of the Apex Court in ***M/s Bombay Chemical Industries vs. Deputy Labour Commissioner & Ors. 2022 (5) SCC 629***, to project that once the difference of wages as such was being sought by the workmen, the forum for preferring a petition under Section 33-C(2) of the Act would not be maintainable and, thus, objected to the award, which was duly upheld by the learned Single Judge.

4. The judgment of the learned Single Judge as such was also relied upon by the learned counsel for the appellants, passed in ***CWP No. 186 of 1996***, titled as ***Cement Corporation of India vs. The Presiding Officer, Labour Court & Ors.***, decided on 30.05.2003, to submit that in similar circumstances, the learned Single Judge of this Court had allowed the writ petition and come to the conclusion that the

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Labour Court has no jurisdiction to pass the impugned award. It is, thus, submitted that once the quantification was only on the basis of the Central Wage Board, the Labour Court would have jurisdiction under Section 22-C(2) of the Act.

5. On the other hand, counsel for respondent No. 2 again placed reliance upon the judgment in ***Central Bank of India Ltd. (Supra)***, which has also been relied upon by the learned Single Judge, to submit that what was being claimed was as per the Central Wage Board Award and the limited relief, which has been granted, was only that what was payable to the contractual employees under the said award in preference to the amount which has been paid as per the rates prescribed by the Himachal Pradesh Government, to a contractual employee.

6. The two judgments upon which the reliance has been placed in the reply to the petition under Section 33-C(2) of the Act were also accordingly distinguished by the learned counsel for respondent No. 2.

7. A perusal of the application, which was filed before the Labour Court, would go on to show that a specific claim as such of the workman was that he was employed in Limestone Mine of Rajban Cement Unit of Cement Corporation of India as Office Assistant, which appointment he had got on account of compassionate basis as his father as such was earlier employed as a Driver and had died in road accident while driving the

management vehicle on duty. He had averred that had been shown on the rolls of one contractor-respondent No. 3 - Sh. Albel Singh and assurance was given that he would be given regular appointment but no regular appointment was given. He had been assigned various works including the ropeway and also assigned the job of office assistant of Mining Section of Rajban Cement Unit and had been working since 21.04.2003 and being paid wages as per the minimum wages decided by the Himachal Pradesh Government.

8. Resultantly, the claim as such that he was covered under Cement Wages Board Awards/Tripartite settlements signed before Chief Labour Commissioner, Government of India, Ministry of Labour, New Delhi from time to time and State Government Minimum wages had no applicability on the management, which is bound by the Central Cement Wages Board and he was entitled for grant of regular and permanent employment to get the Cement Wages Board benefits. Thus, difference of the wages payable as per the Cement Wages Board settlement equal to Rs.5,08,501/- was claimed from his appointment in the year 2003 till December, 2009 and to get all other arrears as such.

9. The defence as such on the maintainability aspect was only that he was not connected with the manufacturing process, which has been highlighted as such and, therefore,

there was an exemption under the Board by the Board itself and it was admitted that he had been paid wages as notified by the appropriate government under the provisions of Minimum Wages Act. There was no clarification given as to how he was not governed by the Cement Wages Board Awards of Settlements as is clear from the para-8 of the written statement, which reads as under:-

> *"8. The contents of this paragraph are denied since the petitioner had been engaged on purely temporary basis. He is not governed by the Cement Wages Board Awards of Settlements."*

10. In such circumstances, the Tribunal as such vide detailed order had granted the benefit, which is only limited to the extent that the difference as per para-11 of the claim petition is the amount which is quantified. The detail of the calculation has been mentioned and has not been disputed by the management to get the difference and the management was directed to pay the entire amount within two months and to continue to pay wages as per the provisions of the Central Wages Board.

11. The argument, thus, which is raised that the employee was not in the manufacturing unit and was excluded is without any basis. There is no denial that the applicability of the Central Wages Board was there to the employees and, therefore,

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the only parity which has been given as such *inter se* is that the minimum wage which has been given as per the State was not the entitlement but the one fixed by the Central Wage Board.

12. It is in such circumstances, the Labour Court came to the conclusion that he was entitled to get difference of wages and it was already a pre-determined right and, therefore, it was only in the form of execution, therefore, the application under Section 33-C(2) was held to be maintainable.

13. A reference was accordingly made to para 14.8 of the Central Wage Board. The recommendation in para 14.8 is a summary of the recommendation under Chapter 14 was relied upon to hold that the contract labour in the Cement Industry would get the same wages and dearness allowance etc. as per the departmental labour and get the same rate of bonus. The said clause reads as under:-

> *"14.8 Wherever contract labour is employed in the Cement Industry, such labour should get the same wages, dearness allowance, leave, medical facilities, hours of work and overtime as departmental labour and they should get the same rate of bonus. Any benefits other than these granted under an award or settlement should continue during the pendency of such award or settlement."*

14. Similarly reliance was also placed upon paragraph 4.27 which reads as under:-

> *"Where ever contract labour is employed in the Cement Industry, such labour should get the same wages, dearness allowances, leave, medical facilities, hours of work and overtime as departmental labour and they should also get the same rate of bonus. If any contract labour is getting any benefits at any place other than those mentioned above under an Award or Settlement, such benefits should continue during the pendency of the Award or settlement. We would also recommend that employers should carry more direct responsibility to ensure that the contractor make payment to their labour on the employer premises and in the presence of a representative deputed by the employer to check and supervise such payment."*

15. It is in such circumstances, the Labour Court came to the conclusion that rates as prescribed by the Central Wages Board was payable and since the amount had been duly mentioned, directed that the said amount be paid and continue to be paid at the same rate.

16. The learned Single Judge, as noticed, relied upon various judgments and reference is made to the judgment in ***Punjab National Bank's case (supra)***, which would go on to show that it was a case of the implementation of the Sastry award by providing the fixation of pay and it was then held that the Labour Court would have jurisdiction. Similarly, in ***P.S. Rajagopalan's case (supra)***, it was held that workmen has right to receive benefit and if the right is not disputed, nothing

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more needs to be done and the Labour Court can proceed to compute the value and it would be competent to interpret the award of settlements, which claim is made under Section 33-C(2) of the Act.

17. While referring to the judgment in ***East India Coal's case (supra)***, it was noticed that the claim was under the bonus scheme made under the Coal Mines Provident Fund and Bonus Schemes Act, 1948 to come to the conclusion that the maintainability under Section 33-C(2) would lie.

18. Resultantly, we have come to the conclusion that there is existing right and it was already adjudicated upon and binding and there was no specific explanation as such by the management as to how the Central Wages Board was not applicable. It is in such circumstances, the Tribunal had come to the conclusion that it is a pre-existing benefit, therefore, it had jurisdiction, which has been rightly upheld by the learned Single Judge.

19. The judgment which would be of relevance, which had been objected to in the written statement before the Tribunal are ***D. Krishnan & Anr. vs. Special Officer, Vellore Cooperative Sugar Mill & Anr., (2008) 7 SCC 22***, which is the case where the award of the Labour Court has been quashed by the Division Bench on the ground that there was no pre-existing right since the claim was for over-time wages. The

Labour Court had allowed the said claim while falling back on Section 59 of the Factories Act providing the payment of over-time wages as per the documents on record, which order had been upheld by the learned Single Judge. It was then interferred on account of the fact that there was no pre-existing right and it was not a matter for decision under the provisions of Section 33-C(2) of the Act, which is not the case herein, and therefore, the said judgment has no applicability to the present case.

20. Similarly, in ***U.P. State Road Transport Corp. vs. Birendra Bhandari (2006) 10 SCC 211***, the interference by the Apex Court was on account of the fact that the recommendations of the Fifth Pay Commission were held to be binding on the appellant-Corporation and, therefore, the said order was set aside on the ground that it was not a pre-existing benefit. It is settled principle that mere recommendations of the pay commission until adopted would not create any enforceable right. Therefore, the said judgment is also not applicable to the facts and circumstances.

21. Lastly, coming to the judgment passed in ***Cement Corporation of India vs. The Presiding Officer, Labour Court (Annexure P-9)***, which has been relied upon, this Court is of the considered opinion that the same is distinguishable as the claim was to receive equal wages for equal work done by regular employees of the management and it was found that it

had not been earlier adjudicated and neither accepted that workman was employed in the unit at Rajban and there was no earlier adjudication. Thus, it had been held that Labour Court had no jurisdiction to decide the workman entitlement and then proceed to compute the benefits, while placing reliance upon the judgments in ***Municipal Corporation vs. Dinesh Razak & Ors., 1995 (1) SCC 235*** and ***State Bank of India vs. Ram Chandra Dubey & Ors., (2001) 1 SCC 73*** and, thus, the said judgment, as such would not be applicable as canvassed by the learned counsel for the appellant.

22. Thus, keeping in view the above, we are of the considered opinion that the judgment passed by the learned Single Judge does not suffer from any infirmity or illegality which warrants a different view.

23. The issue of sick industry and the fact that the particular unit was not a sick unit, is a factual matter and the said issue has not been raised by the learned counsel for the appellant, therefore, we need not spend time on the same. Since, the interim order had been passed and the execution of the award has remained stayed vide order dated 21.11.2016, we are of the considered opinion that the workman would be entitled for interest @ 6% per annum from 17.08.2010 till the date of its realisation since the workman has not been able to get the fruits of litigation for all these long years.

24. Accordingly, the present appeal is dismissed, so also pending applications, if any.

(G. S. Sandhawalia)
Chief Justice

(Bipin C. Negi)
Judge

25th April, 2026 (sanjeev)