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IN THE HIGH COURT OF BOMBAY AT GOA

COMPANY APPLICATION NO.3 OF 2023
WITH
COMPANY PETITION NO.1 OF 2001, COMPANY APPLICATION
NO.36 OF 2021 (F)
COMPANY APPLICATION NO.3 OF 2023
IN
COMPANY PETITION NO.1 OF 2001

NATIONAL AUTO ACCESSORIES LTD.,
(IN LIQUIDATION) THR. IFCI LTD.
ACTING AS THE LIQUIDATOR ... APPLICANT

Versus

SANTOSH KANTA ASSOLDEKAR
AND ANR ...RESPONDENTS

WITH
COMPANY PETITION NO.1 OF 2001

IN REM/S. NATIONAL AUTO
ACCESSORIES LTD. ... PETITIONER

Versus

THE CHAIRMAN and MD,
NATIONAL ACCESSORIES LTD.
and ORS ...RESPONDENTS

WITH
COMPANY APPLICATION NO.36 OF 2021 (F)
IN
COMPANY PETITION NO.1 OF 2001

IN RE M/S NATIONAL AUTO
ACCESSORIES LTD.
(IN LIQUIDATION) ... APPLICANT

Ms. Amira Razaq, Advocate for the Applicant.
Mr. Shivraj Gaonkar, Advocate for the Respondents.

CORAM: BHARAT P. DESHPANDE, J.

RESERVED ON: 28th February, 2024

PRONOUNCED ON: 01st March, 2024

ORDER

1. The liquidator preferred present application with the following prayers:

> *"a) That the Hon'ble High Court be pleased to call for the records of said labour proceedings and after examining the records pleased to grant leave to institute an appropriate writ petition or other proceeding as deemed fit to challenge the maintainability of the said Labour proceedings under Section 33(2) (C) of the Industrial Disputes Act, 1947.*
>
> *b) The order dated 29/08/2022 passed by the Hon'ble Labour Court, Panaji in the LC-II/LCC/33/2017 and LC-II/LCC/34/2017 be quashed and the said Labour cases filed by the Respondents before the Hon'ble Labour Court at Panaji be closed /dismissed.*
>
> *c)Such other further and appropriate orders as this Hon'ble Court deems fit and proper."*

2. Heard Ms. Razaq appearing for the Liquidator and Mr. Gaonkar appearing for the Respondents.

3. The Respondents instituted proceedings before the Labour Court under Section 33-C(2) of the Industrial Disputes Act against the Applicant/Company which is in liquidation wherein the Applicant filed an application for dismissal of such proceedings on the precise ground that a settlement was arrived at between the workmen and the said company and such settlement have been accepted by the Industrial Court. Apart from the amount mentioned in the settlement, the Respondents claiming to be the workmen are not entitled to recover/claim any further amount.

4. Ms. Razaq appearing for the Applicant would submit that the claim raised by the Respondents is beyond the Award/Settlement and thus it is impermissible. She would submit that the memo of settlement has been filed which has been accepted by the Industrial Tribunal wherein the claim of each workman including the Respondents is already settled. The workmen accepted such settlement and accordingly, no further claim could be raised.

5. By placing reliance in the case of **Municipal Corporation of Delhi Vs. Ganesh Razak, 1995 1 SCC 235**, Ms. Razak would submit that no further claim could be entertained once the

settlement have been arrived at and accepted by the Industrial Court. She would submit that the Labour Court vide its impugned order dated 29.08.2022 failed to consider such aspects and arrived at an incorrect finding. She submits that the proceedings initiated by the Respondents cannot be allowed to go further as no such claim is admissible or maintainable.

6. Per Contra, Mr. Gaonkar appearing for the Respondents would submit that though settlement was arrived at, the case put forth by the Respondents is totally separate and distinct from the settlement and the award. He submits that the Respondents prior to the lock-out, were suspended and when the lock-out was imposed, their suspension orders were revoked, however, they were not allowed to join as the company was under the lock-out. He submits that once the suspension is revoked without holding an inquiry, the workman is entitled for regular salary along with other benefits including bonus.

7. Mr. Gaonkar would submit that the case of the Respondents is totally distinct and separate from the settlement arrived at and they are entitled to receive their full salary as well as other benefits once their suspension has been revoked without conducting any inquiry. He submits that such suspension was

prior to the settlement between the Union and the Company and thus, both these issues cannot be clubbed together.

8. While placing reliance in the case of **Central Bank of India Vs. P.S. Rajagopalan, AIR 1964 SC 743,** a decision by a Constitutional Bench, Mr. Gaonkar would submit that applications filed by the Respondents under Section 33-C (2) of the Industrial Disputes Act are very much maintainable.

9. Mr. Gaonkar would then place reliance on the decision of the Apex Court in the case of **New Taj Mahal Cafe (P) Ltd.Vs. Labour Court, Hubli, (1970) 2 LLJ 51** in support of his contentions.

10. Rival contentions fall for determination.

11. Respondents filed application under Section 33-C(2) of the Industrial Disputes Act in the year 2017 claiming certain benefits. The basic contention of the Respondents is that they were placed under suspension on baseless and false charges somewhere in the year 1994. The charge-sheet was issued and an inquiry was initiated. However, the company revoked the suspension order somewhere in the year 1999. The Inquiry was not completed and no orders were passed. The Respondents then

tried to join the service, however, the company informed the Applicant that the Factory is under lock-out and therefore, the Respondents were not permitted to report for work.

12. It is their contention that from the time of their suspension order till the time it was revoked, the Respondents were under suspension and were paid suspension allowance. However, when the suspension was revoked and no inquiry report was placed, the Respondents/Workmen were entitled to receive full wages during the suspension period as well as other benefits including the bonus.

13. The application filed under Section 33-C (2) of the Industrial Disputes Act, disclose the specific claim with regard to the difference between the salary payable and the amount paid by way of suspension allowance from time to time and then monthly wages from April 1999 till September 2001 when the settlement award was accepted. Similarly, the amount towards leave encashment and bonus is also claimed.

14. Vide Writ Petition No. 192 of 2018, a prayer was made to issue writ to the Deputy Labour Commissioner to refer the dispute to the Industrial Court since the Deputy Labour

Commissioner vide his order dated 17.05.2017 refused to make such reference raised by the workmen of a company which was in liquidation. The Co-ordinate Bench of this Court vide its order dated 30.10.2018 allowed the said petition and accordingly directed the Deputy Labour Commissioner to take fresh decision in the light of observations made in the said petition.

15. The company through Liquidator, filed an application for review vide Civil Application (Review) no.35/2018 in Writ Petition No.192 of 2018. This review was decided by the Co-ordinate Bench of this Court vide order dated 03.05.2019. The observations of this Court in para 6 reads thus:-

> *"6. Since both the parties are ad idem and since this Court has already held that the Deputy Labour Commissioner could not have gone into the merits of the dispute and more particularly about the validity of settlement agreement arrived at between the Company in liquidation and labour union, in the peculiar facts and circumstances of this case, we direct the State Government to make a reference to the Industrial Tribunal under the relevant provisions of Section 10 of the Industrial Disputes Act, 1947 within four weeks from the date of communication of this order.*

Upon receipt of such reference from the State Government, the Industrial Tribunal shall decide the said reference expeditiously and not later than six months from the date of such reference. Neither the Applicant nor the Official Liquidator shall seek any unnecessary adjournments before the Tribunal. The contention of the Official Liquidator that there was deemed closure and not factual closure of the Company in liquidation is kept open. It is made clear that we have not expressed any views on merits of the claim of the employees as well as the aforesaid stand taken by the Official Liquidator."

16. Accordingly, a reference was made by the Government of Goa to the Industrial Tribunal upon which an award was passed on 19.11.2019 and operative part of the said award which is published in the Government Gazette reads thus:-

ORDER

(i) It is hereby held that the Settlement dated 09-04-2001 signed between the management of M/s. National Auto Accessories Limited and Goa Trade and Commercial Workers Union on account of deemed closure of M/s. National Auto Accessories Limited with effect from 09-02-2001, is legal and justified.

(ii) The Party I/Workmen are therefore not entitled to any reliefs.

(iii) No order as to costs.

17. The Applicant by filing an application before the Labour Court in the proceedings filed by the Respondents under Section 33-C(2) of the Industrial Disputes Act, claimed that in view of the settlement arrived at, no further claim of any workmen could be entertained.

18. Section 33-C of the Industrial Disputes deals with recovery of money due from an employer. The sub-section (1) provides that where any money is due from an employer under a settlement or an award or under the provisions of Chapter V-A or Chapter V-B, the workmen himself or any other person authorised by him in writing in his behalf, make an application to the appropriate Government for recovery of money due to him, and if the appropriate Government is satisfied that any money is so due, shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as arrear of land revenue.

19. In the present matter we are dealing with the sub-section (2) of Section 33-C. This provision deals with entitlement of any workman 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.

20. Thus the wordings of Section 33-C(2) are very clear which gives an option to the workman to file an application before the Labour Court for recovery from his employer, any money or benefit which is capable of computing in money.

21. The question which now requires to be considered in the present application is whether in view of the settlement arrived at between the workmen and the company, any further claim of money would be entertained by the Labour Court.

22. In **Municipal Corporation Delhi(supra)**, the matter was pertaining to a claim raised by daily rated/casual workers of the Municipal Corporation of Delhi who claimed that they were doing same kind of work as that of regular employees and therefore, they were required to be paid at par with the regular employees on principle of Equal Pay for Equal Work. On this

basis, the claim computation of arrears of their wages at the rate at which wages are paid to the regular employees was filed in accordance with Section 33-C(2) of the Industrial Dispute Act. The Labour Court accepted the claims and passed an award.

23. The Delhi Municipal Corporation challenged the said award before the High Court, however, such petitions were dismissed. In such circumstances, the question before the Apex Court was, whether prior to adjudication or recognition of the disputed claim of the workmen to be paid on the same rate as the regular employees, proceedings for computation of arrears of wages claimed by them on that basis are maintainable under Section 33-C(2) of the Industrial Disputes Act. The Apex Court while answering this question observed that the claim raised by the casual workers was not adjudicated or admitted by the Employer and therefore, such claim for computation under Section 33-C(2) which is admittedly an execution proceedings, would not arise.

24. The above decision in the case of **Municipal Corporation Delhi (supra)** will not be applicable to facts of the matter in hand since the claim of the casual workers was on the basis of equal pay equal work and not on an admitted claim. Thus the

said decision will not be of any help.

25. In the case of **Central Bank of India (supra)** the Constitutional Bench was dealing with the appeals with regard to construction of Section 33-C (2) of Industrial Disputes Act of and in that context the observations from para nos. 16 to 19 are relevant and reads thus:-

> *"16. Let us then revert to the words used in s. 33C(2) in order to decide what would be its true scope and effect on a fair and reasonable construction. When sub-section(2) refers to any workman entitled to receive from the employer any benefit there specified, does it mean that he must be a workman whose right to receive the said benefit is not disputed by the employer? According to the appellant, the scope of sub-section(2) is similar to that of ssub-section(1) and it is pointed out that just as under sub-section(1) any disputed question about the workmen's right to receive the money due under an award cannot be adjudicated upon by the appropriate Government, so under sub-section(2) if a dispute is raised about the workmen's right to receive the benefit in question, that cannot be determined by the Labour Court. The only point which the Labour Court can determine is one in relation to the computation of*

the benefit in terms of money. We arc not impressed by this argument. In our opinion, on a fair and reasonable construction of sub-section(2) it is clear that if a workman's right to receive the benefit is disputed, that may have to be determined by the Labour Court. Before proceeding to compute the benefit in terms of money the Labour Court inevitably has to deal with the question as to whether the workman has a right to receive that benefit. If the said right is not disputed, nothing more needs to be done and the Labour Court can proceed to compute the value of the benefit in terms of money; but if the said right is disputed, the Labour Court must deal with that question and decide whether the workman has the right to receive the benefit as alleged by him and it is only if the Labour Court answers this point in favour of the workman that the next question of making necessary computation can arise. It seems to us that the opening clause of subs. (2)does not admit of the construction for which the appellant contends unless we add some words in that clause. The Clause "Where any workman is entitled to receive from the employer any benefit" does not mean "where such workman is admittedly, or admitted to be, entitled to receive such benefit." The appellant's construction would necessarily introduce the addition of' the words "admittedly,

or admitted to be" in that clause, and that clearly is not permissible. Besides, it seems to us that if the appellants construction is accepted, it would necessarily mean that it would be at the option of the employer to allow the workman to avail himself of the remedy provided by sub-section(2) , because he has merely to raise an objection on 'the ground that the right claimed by the workman is not admitted to oust the jurisdiction of the Labour Court to entertain the workman's application. The claim under Section 33-C(2,) clearly postulates that the determination of the question about computing the benefit in terms of money may, in some cases, have to be preceded by an enquiry into the existence of the right and such an enquiry must be held to be incidental to the main determination which has been assigned to the Labour Court by sub-section(2). As Maxwell has observed "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution". We must accordingly hold that Section 33-C(2) takes within its purview cases of workmen who claimed that the benefit to which they are entitled should be computed in terms of money, even though the right to the benefit on which their claim is based is disputed by their employers incidentally, it may be relevant to add that it would

be somewhat odd that under sub-section(3), the Labour Court should have been authorised to delegate the work of computing the money value of the benefit to the Commissioner if the determination of the said question was the only task assigned to the Labour Court under sub-section(2). On the other hand, sub-section(3) becomes intelligible if it is held that what can be assigned to the Commissioner includes only a part of the assignment of the Labour Court under sub-section(2) .

17. It is, however, urged that in dealing with the question about the existence of a right set up by the workman, the Labour Court would necessarily have to interpret the award or settlement on which the right is based, and that cannot be within its jurisdiction under section 33-C(2), because interpretation of awards or settlements has been specifically and expressly provided for by s. 36A. We have already noticed that Section 36-A has also been added by the Amending Act 36 of 1956 along with Section 33-C, and the appellant's argument is that the legislature introduced the two sections together and thereby indicated that questions of interpretation fall within Section 36-A and, therefore, outside Section 33-C(2). There is no force in. this contention. Section 36A. merely provides for the interpretation of any provision of

an award or settlement where any difficulty or doubt arises as (1) as to the said interpretation. Generally, this power is invoked when the employer and his employees are not agreed as to the interpretation of any award or settlement, and the appropriate Government is satisfied that a defect or doubt has arisen in regard to any provision in the award or settlement. Sometimes, cases may arise where the awards or settlements are obscure, ambiguous or otherwise present difficulty in construction. It is in such cases that Section 36-A can be invoked by the parties by moving the appropriate Government to make the necessary reference under it. Experience showed that where awards or settlements were defective in the manner just indicated, there was no remedy available to the parties to have their doubts or difficulties resolved and that remedy is now provided by Section 36-A. But the scope-of Section 36-A is different from the scope of Section 33-C(2), because Section 36-A is not concerned with the implementation or execution of the award at all, whereas that is the sole purpose of Section 33-C(2). 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.

18. 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.

19. We have already noticed that in enacting Section 33-C the legislature has deliberately omitted some words which occurred in Section 20(2) of the Industrial Disputes (Appellate

Tribunal) Act, 1950. It is remarkable that similar words of limitation have been used in Section 33-C (1) because Section 33-C(1) deals with cases where any money is due under a settlement or an award or under the provisions of Chapter V-A. It is thus clear that claims made under Section 33-C(1), by itself can be only claims referable to the settlement, award, or the relevant provisions of Chapter V-A. These words of limitations are not to be found in Section 33-C(2) and to that extent, the scope of Section 33-C(2) is undoubtedly wider than that of Section 33-C(1). It is true that even in respect of the larger class. of cases which fail under Section 33-C(2), after the determination is made by the Labour Court the execution goes back again to Section 33-C(1). That is why Section 33-C(2) expressely provides that the amount so determined may be recovered as provided for in sub-section (1).It is unnecessary in the present appeals either to state exhaustively or even to indicate broadly what other categories of claims can fall under Section 33-C(2). There is no doubt that the three categories of claims mentioned in Section 33-C(1) fall under Section 33-C(2) and in that sense, Section 33-C(2) can itself be deemed to be a kind of execution proceeding;.but it is possible that Claims not based on settlements, awards or made under the provisions of Chapter V A, may also be

competent under Section 33-C(2) and that may illustrate its wider scope. We would, however, like to indicate some of the claims which would not fall under Section 33-C (2), because they formed the subject matter of the appeals which have been grouped together for our decision along with the appeals with which we are dealing at present. If an employee is dismissed or demoted and it is his case that the dismissal or demotion is wrongful, it would not be open to him to make a claim for the recovery of his salary or wages under Section 33-C(2). His demotion or dismissal may give rise to an industrial dispute which may be appropriately tried, but once it is shown that the employer has dismissed or demoted him, a claim that the dismissal Or demotion is unlawful and. therefore, the employee continues to be the workman of the employer and is entitled to the benefits due to him under a preexisting contract, cannot be made under s. 33 C (2). If a settlement has been, duly reached between the employer and his employees and it fails under Section 18(2) or (3) of the Act and is governed by Section(19)2, it would not be open to an employee, notwithstanding the said settlement, to claim the benefit as though the said settlement had come to an end. If the settlement exists and continues to be operative no claim can be made under Section 33-C(2) inconsistent with

> *the said settlement. If the settlement is intended to be terminated, proper steps may have to be taken in that behalf and a dispute that may be arise thereafter may to be dealt with according. to the, other procedure prescribed by the Act. Thus, our conclusion is that the scope of Section 33-C(2)is wider than Section 33-C(1) and cannot be wholly assimilated with it, though for obvious reasons, we do not propose to decide or indicate what additional cases would fall under Section 33-C(2) which may not fall under Section 33-C(1). In this connection, we may incidentally state that the observations made by this Court in the case of Punjab National Bank Ltd (1), that Section 33-C is a provision in the nature of execution should not be interpreted to mean that the scope of Section 33-C(2) is exactly the same as Section 33-C(1).*

26. In the case of **New Taj Mahal (supra)** the Apex Court observed that if money or benefit as claimed by the workmen on the basis that the right already exists and the existence of that right is denied, it is competent for the Labour Court in the proceedings under Section 33-C(2) to decide whether the right does or does not exists.

27. In the present matter, the Respondents claimed the difference between suspension allowance and their salary

together with bonus. Admittedly, the Respondents were suspended and paid suspension allowance till their suspension was revoked. The Respondents were not allowed to join duty due to lock-out. Therefore, it is not the case that the Respondents are not having any right to claim the difference between the suspension allowance and the actual salary as well as bonus and other benefits which would be computed in terms of money during the time they were placed under suspension.

28. The observations of the Apex Court in the case of **Central Bank of India(supra)** as quoted above and more specifically in para 19 are clearly applicable to the matter in hand. Since their claim has not been accepted, the Labour Court is entitled to adjudicate upon including the fact that there is a settlement between the workmen and the company and only thereafter to decide whether the claim of the Respondents could be admitted.

29. The learned Labour Court rightly considered this aspect in the impugned order and thus, no interference is warranted. The application, therefore, deserves to be rejected and accordingly, stands rejected.

BHARAT P. DESHPANDE, J.