This precisely has been done in the instant case. The measure of grant of 10 per cent weightage in such circumstances by the Punjab University is an instance of institutional preference and yet all the seats have remained open to everyone. The petitioner rubbed shoulders against the Graduates from the Punjab University and it turns out to be that he has not been successful. It does not lie in the mouth of the petitioner now to suggest that there was some reservation, for had there been any, he would not have been considered at all. We are, thus, of the view that no fault can be found with such weightage granted to the Punjab University Graduates in the matter of admission to the Law Department of the Punjab University, Chandigarh. Resultantly, we dismiss the petition *in limine*.

R.N.R.

Before A. P. Chowdhri, J.

MIYA SINGH,—Petitioner.

versus

M/S HARYANA ROADWAYS, KAITHAL AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 3025 *of* 1987

September 14, 1988.

Industrial Disputes Act (XIV of 1947)—*S.* 33—*C*(2)—*Workman claiming back wages for period between termination and reinstatement by an Award of Labour Court—Award silent as to relief of back wages—Claim for back wages—Whether maintainable in proceedings under section* 33—*C*(2)—*Scope of section* 33-*C*(2) *discussed.*

Held, that after the amendment by Act 36 of 1964, there are two parts of sub-section (2) of S. 33-C of the Industrial Disputes Act, 1947. The first part is concerned with the money claimed simpliciter and the second part speaks about computation in terms of money and, if any, benefit of which the workman is entitled. On a plain reading of the wording of the statute, it would appear that where any workman is entitled to receive from his employer any money and if any question arises as to the amount of money, then the question may be decided by the Labour Court. In other words, the Labour Court under section 33-C(2) is competent to entertain claims and determine them *de hors* settlement or award.

(Para 10)

Miya Singh *v.* M/s Haryana Roadways, Kaithal and another
(A. P. Chowdhri, J.)

Petition under Articles 226 *and* 227 *of the Constitution of India praying that* :

(*i*) *A writ, order or direction be passed quashing* (*Annexure P*/7) *the order of the Labour Court dated 4th February,* 1987.

(*ii*) *that direction be given to the Respondent No.* 1 *to pay Backwages to the petitioner from* 10*th June,* 1982 *to* 23*rd March,* 1986.

(*iii*) *that the services of the petitioner be made permanent.*

(*iv*) *any other relief to which the petitioner is entitled, be given keeping in view the peculiar facts and circumstances of the case.*

(*v*) *Cost of the petition be awarded to the petitioner.*

(*vi*) *filing of certified copies of the Annexure be dispensed with.*

Abha Rathore, Advocate, *for the Petitioner.*

Sumit Kumar, AAG, Haryana, *for the Respondents.*

JUDGMENT

A. P. Chowdhri, J.—

(1) This writ petition raises an important question of law namely, where termination of the service of the workman is held to be void *ab initio* under section 10(1)(c) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), whether it is within the jurisdiction of the Labour Court to determine the amount of money due or any benefit which is capable of being computed in terms of money under section 33-C(2) of the Act.

(2) In order to appreciate the question, the facts of the case may be stated thus :

(3) The petitioner was appointed Chowkidar on daily wages in Haryana Roadways Depot, Kaithal, on 8th December, 1976. He was paid wages on monthly basis at the rate of Rs. 325 per month. He continued working without any break till 9th June, 1982. His services were then terminated by order dated 10th June, 1982. The management did not comply with the mandatory provisions of section 25-F(a) and 25-F(b) of the Act. The workman served a demand notice, Annexure P-1A, dated 28th July, 1982 on the

management. On a reference from the State Government, the dispute was entrusted to Labour Court, Faridabad, which was later on transferred to Labour Court, Ambala. The workman filed his claim statement, Annexure P-1. The management filed written statement Annexure p. 2. The workman filed his rejoinder Annexure p. 3. By award, dated 25th November, 1985, Annexure P-4, the Labour Court, Ambala, held that the petitioner remained in service of the respondent for more than 240 days and at the time of termination of his services he was neither given any notice nor retrenchment compensation. It was further held that the provisions of section 25-F(a) and 25-F(b) of the Act were mandatory and, therefore, the order of termination was illegal and did not bind the petitioner. The order of termination was accordingly set aside.

(4) In compliance with the order of the Labour Court, the petitioner was appointed on daily wages as helper/chowkidar by the respondent,—*vide* order dated 20th March, 1986, Annexure p. 5. In the order of appointment there was no reference to payment of back wages. The petitoiner then made an application under section 33-C(2) of the Act to the Labour Court, Ambala, claiming Rs. 21,456 on account of arrears of wages from 10th June, 1982 to 23rd March, 1986 including Rs. 1,000 as costs. Copy of the application under section 33-C (2) of the Act is Annexure P. 6. The application was contested by the management and by order, Annexure P-7, dated 4th February, 1987, the application was dismissed by the Labour Court. In the present petition, the workman has challenged the validity of the order passed by the Labour Court dismissing his application under section 33-C(2) of the Act. The petitioner has prayed that the order of the Labour Court, Annexure P-7, dated 4th February, 1987 be quashed; that he may be paid back wages for the period already mentioned and that his services may be regularised, especially as two persons Pokhar Singh, Chowkidar, and Sher Singh, Gunman, who were recruited after petitioner's appointment had been made permanent.

(5) In the return, the facts set out above are not disputed. The only plea is that the back wages were not paid as there was no order to this effect in the award of the Labour Court. With regard to regularisation, it was stated that only persons recruited through approved sources were regularised and as the petitioner had been appointed directly on daily wages, his services could not be regularised. It was also stated in the return that the petitioner had failed to make out a case for the grant of back wages inasmuch as he failed to lead any evidence and, therefore, the Labour Court did

not grant him the said relief of payment of back wages. Reference to the award dated 25th November, 1985, whereby termination of the services of the petitioner was declared illegal, shows that the petitioner had claimed full back wages besides reinstatement in service. In fact, the reference made to the Labour Court expressly stated to what relief was the workman entitled if termination of his services was not justified. For reasons which are not available on record, the learned Labour Court did not go into the question of back wages at all. This necessitated the filing of an independent application under section 33-C (2) of the Act. The learned Labour Court simply proceeded to construe the award dated 25th November, 1985 (Annexure P-4) instead of considering the merits of the claim of the workman with regard to payment of back wages.

(6) In the penultimate paragraph of the order dated 4th February, 1987 (Annexure P-7), which is impugned in this writ petition, the learned Labour Court observed that he had gone through the award dated 25th November, 1985, in which relief of reinstatement had been given to the workman, but the other relief of back wages had not been given. The matter was disposed of by saying . "the workman either did not claim back wages, or no evidence was led in support of claim of back wages." No attempt was made to ascertain the scope of the provisions of section 33-C(2) of the Industrial Disputes Act or to go into the question whether the relief of back wages which had been specifically asked by the workman had been gone into and denied on merits.

(7) The question posed in the beginning of this order necessitates an examination as to the scope of section 33-C (2) of the Act. Section 33-C, as amended upto-date reads as under :—

> "33-C. *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 V-A or Chapter V-B, 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 the 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 the 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 applicant 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.

(3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the commissioner and other circumstances of the case.

(4) The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in sub-section (1).

(5) Where workman employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen."

Pardoxically enough, in the original Act, there was no speedy remedy to individual employees enabling them to enforce their existing rights. In other words, there was no remedy available to an individual employee, who did not seek to raise an industrial dispute in the sense that he did not want any change in his terms and conditions of service, but wanted only to implement or enforce his existing rights. To remedy the defect, the Parliament enacted the Industrial Disputes (Appellate Tribunal) Act, 1950. Section 20 of the said Act roughly corresponded to the provisions of the present section 33-C(2) of the Act. In 1953, certain additional provisions were made to help the workman by enacting Industrial Disputes (Amendment) Act, 1953. This was followed by the enactment of the Industrial Disputes (Amendment and Miscellaneous Provisions) Act. 1956, which repealed the Industrial Disputes (Appellate Tribunal) Act, 1950 and also section 25-1 in Chapter V-A of the Industrial Disputes Act and *inter alia* inserted sections 33-C and 36-A in the Act. On the basis of experience gained in the working of section 33-C, the said provision was re-cast and substituted by the present section 33-C by the Industrial Disputes (Amendment) Act, 1964 (Act No. 36 of 1964).

(8) Prior to the amendment by Act 36 of 1964, their lordships of the Supreme Court considered the scope of section 33-C in *East India Coal Co. Ltd.* v. *Rameshwar* (1) and succinctly summarised the effect of its three earlier decisions in the following propositions :—

> "(1) The legislative history indicates that the legislature, after providing broadly for the investigation and settlement of disputes on the basis of collective bargaining, recognised the need of individual workman of a speedy remedy to enforce their existing individual rights and therefore inserted S. 33-A in 1950 and S. 33-C in 1956. These two sections illustrate cases in which individual workmen can enforce their rights without having to take recourse to S. 10(1) and without having to depend on their union to espouse their case.
>
> (2) In view of this history two considerations are relevant while construing the scope of S. 33-C. Where industrial disputes arise between workmen acting collectively and their employers, such disputes must be adjudicated upon

(1) (1968)1 L.L.J. 6.

in the manner prescribed by the Act, as for instance, under S. 10(1). But, *having regard to the legislative policy to provide a speedy remedy to individual workmen for enforcing their existing rights, it would not be reasonable to exclude their existing rights sought to be implemented by individual workmen. Therefore, though in determining the scope of S. 33C care should be taken not to exclude cases which legitimately fall within its purview, cases which fall, for instance, under S. 10(1) cannot be brought under S. 33-C.*

(3) S. 33-C which is in terms similar to those in S. 20 of the Industrial Disputes (Appellate Tribunal) Act, 1950, *is a provision in the nature an executing provision.*

(4) S. 33-C (1) applies to cases where money is due to a workman under an award or settlement or under Chapter V-A of the Act already calculated and ascertained and therefore, there is no dispute about its computation. But sub-section (2) *applies both to non-monetary as well as monetary benefits. In the case of monetary benefit it applies where such benefit though due to is not calculated and there is a dispute about its calculation.*

(5) S. 33-C(2) takes within its purview cases of workmen who claim 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. It is open to the Labour Court to interpret the award or settlement on which the workmen's right rests.

(6) The fact that the words of limitation used in S. 20(2) of the Industrial Disputes (Appellate Tribunal) Act, 1950, are omitted in S. 33-C(2) shows that *the scope of S. 33-C(2) is wider than that of S. 33-C(1).* Therefore, whereas sub-section (1) *is confined to claims arising under an award or settlement or Chapter V-A, claims which can be entertained under sub-section (2) are not so confined to those under an award, settlement or Chapter V-A.*

(7) Though the Court did not indicate which cases other than those under sub-section (1) would fall under sub-section (2), it pointed out illustrative cases which would not fall under sub-section (2) viz., cases which would appropriately be adjudicated under S. 10(1) or claims which have already been the subject-matter of settlement to which Ss. 18 and 19 would apply.

(8) Since *proceding under S.* 33-C(2) *are analogous to execution proceedings and the Labour Court called upon to compute in terms of money* the benefit claimed by a workman is in such cases in the position of an executing Court, the Labour Court like the executing Court in execution proceedings governed by the Code of Civil Procedure, is competent under S. 33-C(2) to interpret the award or settlement where the benefit is claimed under such award or settlement and it would be open to it to consider the plea of nullity where the award is made without jurisdiction.

To complete the picture *one more proposition may be added to above as* enunciated by the Supreme Court.

(9) It is not essential that the claim which can be brought before the Government or its delegate under S. 33-C(1) must always be for a predetermined sum. *The Government or the Labour Court may satisfy itself about the exact amount and then take action under that section."* (*Emphasis supplied*).

The inter-relation between sub-sections (1) and (2) of section 33-C has been examined by the Supreme Court in several decisions. In *Central Bank of India, Ltd.* v. *P. S. Rajagopalan* (2), it was observed that sub-section (2) does not contain the words of limitation, as used in sub-section (1) which deals with the cases, where the money is due under a settlement or an award or under the provisions of Chapter V-A. Thus, a claim made under sub-section (1), by itself, could only be a claim referable to a settlement, award or the relevant provisions of Chapter V-A. 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) could itself be deemed to be a kind of execution proceeding, but it is possible that claim not based on settlement, award or made under the provisions of Chapter V-A might also be competent under section 33-C (2).

(9) In *U.P. Electric Supply Company Ltd.* v. *R. K. Shukla* (3) the distinction between the two sub-sections was stated thus :—

"The legislative intention disclosed by Ss. 33-C (1) and 33-C (2) is fairly clear. Under S. 33-C (1) where any money

(2) (1963)II L.L.J. 89.
(3) (1969)II L.L.J. 728.

is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A, the workman himself, or any other person authorised by him in writing in that behalf, may make an application to the appropriate Government to recover the money due to him. Where the workman who is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money, applies in that behalf, the Labour Court may under S. 33-C (2) decide the questions arising as to the amount of money due or as to the amount at which such benefit shall be computed. S. 33-C (2) is wider than S. 33-C (1). Matters which do not fall within the terms of S. 33-C (1) may, if the workman is shown to be entitled to receive the benefits, fall within the terms of S. 33-C (2)".

(10) A Division Bench of the Calcutta High Court in *Jessop & Co. v. M. Mukherjee* (4), has stated the following principles marking the areas of jurisdiction under the two sub-sections :—

(1) Where any money is due under a settlement or an award or under the provisions of Chapter V-A, section 33-C (1) will be attracted.

(2) The money due under S. 33-C (1) may be a specified amount or may have to be arrived at by arithmatical calculation or verification simpliciter. In other words, in cases where there is no dispute as to the amount or as to its computation section 33-C (1) would apply.

(3) Section 33-C (2) is more comprehensive than section 33-C (1). It applies not only to cases of a settlement or award or to cases under Chapter V-A of the Act but to other cases as well.

(4) When money due is not specified or the benefit capable of being computed in terms of money has not been determined, section 33-C(2) would be attracted inasmuch as the Labour Court, by a process of computation to be found out and applied by it, has to determine the amount of money due. In other words, in cases of disputes as to calculation or computation of money due or benefit capable of being computed in terms of money section 33-C (2) has to be invoked.

(4) (1975) Lab. I.C. 1307.

(5) Section 33-C (2) also enables a Labour Court to enquire into and decide upon the right to receive the money to be computed provided that the determination of that right is incidental or ancillary to computation.

After the amendment by Act 36 of 1964, there are two parts of sub-section (2). The first part is concerned with the money claimed simpliciter and the second part speaks about computation in terms of money and, if any, benefit of which the workman is entitled. On a plain reading of the wording of the statute, it would appear that where any workman is entitled to receive from his employer any money and if any question arises as to the amount of money, then the question may be decided by the Labour Court. In other words, the Labour Court under section 33-C (2) is competent to entertain claims and determine them *de hors* settlement or award. There are well recognised exceptions to the limit of jurisdiction. These are :—

(a) Where the dispute falls under section 10(1)(c) of the Act, the Labour Court cannot adjudicate the same under section 33-C (2). (Vide *State Bank of Bikaner & Jaipur* v. *Khandelwal*, (5);

(b) The right to the benefit which is sought to be computed must be the existing one, i.e., to say must have already been adjudicated upon. [Vide *East India, Coal Co. Ltd.* v. *Rameshwar* (6)];

(c) Other appropriate cases of which it is not possible to give an exhaustive list.

The crucial test in such cases appears to be the one laid down by the Supreme Court in *P. S. Rajagopalan's case* (supra) i.e. does the claim of the employee made before a Labour Court under section 33-C (2) arise out of an existing right which they had on the date of the application ? Applying the above test, there is no manner of doubt that the question first above posed must be answered in the affirmative.

(11) I am supported in reaching the above conclusion by two Division Bench judgments of this Court in *Inder Singh* v. *Labour Court, Jullundur*, (7), (per R. S. Narula and S. S. Sandhawalia, JJ.) *and Amar Kaur* v. *State of Punjab and others* (8), (per S. S. Sandhawalia, C.J. and M. R. Sharma, J.).

(5) (1968)I L.L.J. 589.
(6) (1968)I L.L.J. 6.
(7) AIR 1969 Pb. and Hry. 310.
(8) 1982 Lab. I.C. 1275.

(12) The next grievance of the petitioner is that two persons, namely Pokhar Singh, Chowkidar and Sher Singh Gunman, who were recruited after the recruitment of the petitioner had been made permanent while services of the petitioner had not been regularised yet. The facts are not disputed in the return filed by the respondents. It was pleaded that the petitioner had been appointed directly and the services of only those employees had been regularised, who had been appointed through the approved source i.e., the Employment Exchange. This point stands covered by a decision in C.W.P. No. 4350 of 1984, decided on February 3, 1988 by J. V. Gupta, J. of this Court.

(13) The writ petition is, therefore, allowed. The respondents are directed to regularize the services of the petitioner within three months from today. The impugned order Annexure P-7, dated 4th February, 1987 passed by the learned Labour Court is set aside and the Labour Court is directed to take further proceedings on the application under section 33-C (2) made by the petitioner and determine the amount due according to law. As considerable delay has already occurred and the petitioner was obliged to file this writ petition, the Labour Court is directed to dispose of the application within a period not exceeding three months as laid down in sub-section (2) of section 33-C, as amended by the Amending Act of 1982. The petitioner shall also be entitled to costs, which I quantify to be Rs. 500. A copy of this order be circulated to Labour Courts in Punjab and Haryana.

R.N.R.

Before V. Ramaswami, C.J. and G. R. Majithia, J.

KARTAR SINGH AND OTHERS,—*Petitioners.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 2083 of 1987

August 4, 1988

Punjab Cooperative Societies Act (XXXV of 1961)—*S.* 26(1-B)—*Election of Managing Committee—No impediment in the way of Committee from entering the office—Commencement of term—Whether counted from the date of election.*