

*Before Mehinder Singh Sullar, J.*  
**GENERAL MANAGER, PUNJAB ROADWAYS, AMRITSAR  
AND ANOTHER,—Petitioners**

*versus*

**SURJIT SINGH AND ANOTHER,—Respondents**

**CWP No. 4906 of 1992**

20th April, 2011

*Constitution of India - Art.226/227 - Industrial Disputes Act, 1947 - S.33-C (2)&10 - Punjab Civil Service (Punishment & Appeals) Rules, 1970 - Proceedings u/s 33C are in nature of execution proceedings for enforcement of a pre-existing right - Claim of workmen to monetary benefits of stoppage of increments and other allowances in pursuance of penalty imposed on them without first challenging and setting-aside the punishment - Not independently maintainable - Labour Court did not have jurisdiction to ignore punishment orders as void and proceed to compute arrears - Entitlement has to be first adjudicated upon in appropriate proceedings - Petition allowed.*

*Held*, That the increments of the workmen were stopped by the management as a consequence of penalty imposed on them, in pursuance of the departmental inquiries held against them. Once the amount of increments and other allowances were stopped as a consequence of punishment orders, then, unless and until, the workmen challenged and punishment orders are set aside in Court or in any appropriate forum of competent jurisdiction, it cannot possibly be said that they have pre-existing rights, which can be enforced under section 33-C(2) of the Act. In that eventuality, the Labour Court did not have the jurisdiction to ignore the punishment orders as void and proceed to compute the arrears in lieu of stoppage of increments and other allowances as claimed by the workmen. Therefore, the impugned awards cannot legally be sustained in the eyes of law in the obtaining circumstances of the case.

(Para 16)

R.S.Rawat, Assistant Advocate General, Punjab *for the petitioners.*

V.K.Kaushal, Advocate for B.R.Mahajan, Advocate for workmen-  
respondent No.1.

**MEHINDER SINGH SULLAR , J. (ORAL)**

(1) As identical questions of law and facts are involved, therefore, I propose to decide the indicated writ petitions, by virtue of this common judgment, in order to avoid the repetition. However, the facts, which need a necessary mention for the limited purpose of deciding the core controversy involved in the instant writ petitions, have been extracted from (1) **CWP No.4906 of 1992** titled as “General Manager, Punjab Roadways, Amritsar and another Vs. Surjit Singh and another” in this respect.

(2) Concisely, the relevant facts, culminating in the commencement, relevant for disposal of the present writ petitions and emanating from the record, are that respondent No.1 (in all the writ petitions) (for brevity “workmen”) were working as Conductors in the employment of the petitioner-General Manager, Punjab Roadways, Amritsar (for short “management”). They were charge sheeted for their misconduct and departmental enquiries were held against them. Having completed all the codal formalities, the workmen were held guilty and penalty of stoppage of their annual increments was imposed on them.

(3) The workmen filed the applications before the Labour Court claiming the monetary benefits of increments, bonus and uniform allowance etc., invoking the provisions of section 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter to be referred as “the Act”). The management contested the applications on the ground of their maintainability as well as on merits, as the workmen had no existing rights to claim the arrears of wages of the increments, which were withheld due to the punishment orders passed by the competent authority.

(4) The parties to the lis, produced their evidence before the Labour Court, in order to substantiate their respective pleaded stands. Taking into consideration the entire material on record, the Labour Court accepted their applications under section 33-C(2) of the Act, by virtue of impugned award dated 17.4.1990 (Annexure P1), which, in substance, is as under:-

*“No evidence has come on record regarding pay scale of the workman or rate of increment payable to him at different stages between 1966, when he joined service and 1982, when he made this application. It is, therefore, directed that*

*the respondents shall calculate the dues of the applicant on account of increments after ignoring the orders mentioned above which have been held to be illegal, void and non-est and shall accordingly allow him proportionate bonus and house rent. The present application is disposed of with these observations and direction leaving it open to the applicant to put in a fresh claim if the calculations made by the respondents are not acceptable to the applicant or if the same, in his opinion, are wrong. The respondents are further directed to make payment of dues so calculated to the workman without further delay.”*

(5) The petitioner-management did not feel satisfied and preferred the present writ petitions, challenging the impugned award (Annexure P1), invoking the provisions of Articles 226 and 227 of the Constitution of India, inter-alia on the following grounds:-

- i. That respondent No.2 i.e. Labour Court is not empowered to adjudicate upon the legality or illegality of the punishment order passed by the punishing authority against the workman.
- ii. That the scope of Section 33C(2) of the Act is limited to the extent that the respondent No.2 ought to have computed the amount due to the workman on the basis of existing right and not beyond that, which has not been determined by respondent No.2 while deciding the application U/s 33C(2) of the act.
- iii. That the respondent No.2 has exercised the jurisdiction not vested in him while deciding the application U/s 33C(2) of the Act.
- iv. That whether the order is legal or illegal is a dispute between the Management and the workman which is covered U/s 10 of the Act and not by the provisions of Section 33C(2).

(6) The workmen contested the claim of the Management and filed the written statements, inter-alia pleading certain preliminary objections of maintainability of the writ petitions and objection of delay. The case set up

by the workmen, in brief in so far as relevant, was that since the punishment orders of stoppage of their increments with cumulative effect were passed without holding any proper inquiry, as contemplated under the provisions of the Punjab Civil Service (Punishment & Appeals) Rules, 1970, so, the Labour Court was competent to entertain the application under section 33-C(2) of the Act. In all, according to the workmen that they were entitled to the amount of stoppage of increments and other allowances. It will not be out of place to mention here that the workmen have stoutly denied all other allegations contained in the writ petitions and prayed for their dismissal. Almost similar lines of pleadings were adopted by the parties in the connected writ petitions bearing Nos.4909 and 12479 of 1992.

(7) Having heard the learned counsel for the parties, having gone through the record with their valuable assistance and after bestowal of thoughts over the entire matter, to my mind, the instant writ petitions deserve to be accepted in this context.

(8) As is evident from the record, that the workmen have filed the applications under section 33-C(2) of the Act, claiming the monetary benefits, amount in lieu of stoppage of increments and other allowances in the wake of punishment orders, which were accepted by the Labour Court, by means of impugned award (Annexure P1). Thus, it would be seen that the facts of this case are neither intricate nor much disputed. Moreover, the controversy boils down to a very narrow compass.

(9) Such thus being the position on record, now the short and significant question, though important, that arises for determination in these petitions, is as to whether the applications under section 33-C(2) of the Act were independently maintainable, to enable the workmen to claim the monetary benefits of stoppage of their increments and other allowances denied, in pursuance of the penalty imposed on them without challenging and setting aside the punishment order or not ?

(10) Having regard to the rival contentions of the learned counsel for the parties, to me, the answer must obviously be in the negative.

(11) It is not a matter of dispute, rather the well recognized principle of law that the proceedings before the Labour Court under section 33-C(2) of the Act are in the nature of execution proceedings and before a workman

can claim computation of any such monetary benefit, he was required to show that he had a pre-existing right for the enforcement of which he approached the Labour Court. If a question arises as to his entitlement, the same will of course have to be first adjudicated upon in appropriate proceedings either under Section 10 of the Act or in any other forum or Court or authority of competent jurisdiction. This matter is not *res integra* and is well settled.

(12) An identical question came to be decided by the Hon'ble Apex Court in case **Central Bank of India versus Raja Gopalan (1)**. Having interpreted the relevant provisions, it was ruled as under:-

*“We would, however, like to indicate some of the claims which would not fall under S. 33C(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 S. 33C(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 pre-existing contract, cannot be made under S. 33C(2). If a settlement has been duly reached between the employer and his employees and it falls under S. 18(2) or (3) of the Act and is governed by S. 19 (2), it would not be open to an employee, notwithstanding the said settlement had come to an end. If the settlement exists and continues to be operative, no claim can be made under S. 33C(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 arise thereafter may be dealt with according to the other procedure*

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(1) AIR 1964 S.C. 743

*prescribed by the Act. Thus, our conclusion is that the scope of S. 33C(2) is wider than S. 33C(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 S. 33C(2) which may not fall under S. 33C(1). In this connection we may incidentally state that the observations made by this Court in the case of Punjab National Bank Ltd., (1962) 1 Lab LJ 234 (AIR 1963 SC 487) that S. 33C is a provision in the nature of execution should not be interpreted to mean that the scope of S. 33C(2) is exactly the same as S. 33C(1) (at p. 238) (of Lab LJ) : (at pp.489-490 of AIR).”*

(13) Not only that, the same view was again reiterated by the Hon’ble Supreme Court in case **Central Inland Water Transport Corporation Ltd. versus The Workmen (2)**, wherein, it was held (para Nos.12 & 13) as under:-

*“It is now well-settled that a proceeding under Section 33C (2) is a proceeding, generally, in the nature of an execution proceeding wherein the Labour Court calculates the amount of money due to a workman from his employer, or if the workman is entitled to any benefit, which is capable of being computed in terms of money, the Labour Court proceeds to compute the benefit in terms of money. This calculation or computation follows upon an existing right to the money or benefit, in view of its being previously adjudged, or, otherwise, duly provided for.*

*In a suit, a claim for relief made by the plaintiff against the defendant involves an investigation directed to the determination of (i) the plaintiff’s right to relief; (ii) the corresponding liability of the defendant, including, whether the defendant is, at all, liable or not; and (iii) the extent of the defendant’s liability, if any. The working out of such liability with a view to give relief is generally regarded as*

*the function of an execution proceeding. Determination no. (iii) referred to above, that is to say, the extent of the defendant's liability may sometimes be left over for determination in execution proceedings. But that is not the case with the determinations under heads (i) and (ii). They are normally regarded as the functions of a suit and not an execution proceeding. Since a proceeding under Section 33C (2) is in the nature of an execution proceeding it should follow that an investigation of the nature of determinations (i) and (ii) above is, normally, outside its scope. It is true that in a proceeding under Section 33C (2), as in an execution proceeding, it may be necessary to determine the identity of the person by whom or against whom the claim is made if there is a challenge on that score. But that is merely 'incidental' To call determinations (i) and (ii) 'incidental' to an execution proceeding would be a perversion, because execution proceedings in which the extent of liability is worked out are just consequential upon the determinations (i) and (ii) and represent the last stage in a process leading to final relief. Therefore, when a claim is made before the Labour Court under Section 33C (2), that court must clearly understand the limitations under which it is to function. It cannot arrogate to itself function - say of an Industrial Tribunal which alone is entitled to make adjudications in the nature of determinations (i) and (ii) referred to above, or proceed to compute the benefit by dubbing the former as 'incidental' to its main business of computation. In such cases determinations (i) and (ii) are not 'incidental' to the computation. The computation itself is consequential upon and subsidiary to determinations (i) and (ii) as the last stage in the process which commenced with a reference to the Industrial Tribunal. It was, therefore, held in *State Bank of Bikaner and Jaipur v. R. L. Khandelwal*, (1968) 2 Lab LJ 589 (SC), that a workman cannot put forward a claim in an application under Section 33C (2) in respect of a matter which is not based on an*

*existing right and which can be appropriately the subject matter of an Industrial Dispute which requires a reference under Section 10 of the Act.”*

(14) Reliance in this regard can also be placed on the judgment of this court in case **General Manager versus Shri Dyal Singh (3)**.

(15) The argument of learned counsel for the workmen that as the punishment orders of stoppage of the increments with cumulative effect and other allowances of workmen were passed without holding any proper inquiry, therefore, the Labour Court was competent to entertain the applications under section 33-C (2) of the Act, is not only devoid of merit but misplaced as well and “*stricto sensu*” deserves to be and is hereby repelled under the present set of circumstances.

(16) What is not disputed here is that the increments of the workmen were stopped by the management as a consequence of penalty imposed on them, in pursuance of the departmental inquiries held against them. Once the amount of increments and other allowances were stopped as a consequence of punishment orders, then, unless and until, the workmen challenged and punishment orders are set aside in Court or in any appropriate forum of competent jurisdiction, it cannot possibly be saith that they have pre-existing rights, which can be enforced under section 33-C(2) of the Act. In that eventuality, the Labour Court did not have the jurisdiction to ignore the punishment orders as void and proceed to compute the arrears in lieu of stoppage of increments and other allowances as claimed by the workmen. Therefore, the impugned awards cannot legally be sustained in the eyes of law in the obtaining circumstances of the case.

(17) No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

(18) In the light of aforesaid reasons, the instant writ petitions are accepted. Consequently, the impugned awards are hereby set aside.

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**V. Suri**