

% 15.12.2006

Present: Mr. Vinay Sabharwal for the petitioner.  
Ms. Rasmeet K. Charya for the respondent.

+ WP(C) No. 21015/2005

By this writ petition, the petitioner has challenged the validity of order dated 17.9.2003 passed by the Presiding Officer, Labour Court No.VII.

By this order the Labour Court had allowed an application under Section 33C (2) of *Industrial Disputes Act 1947 (for short the Act)* made by the workman claiming arrears of pay from 9.8.1992 to 31.1.2001 amounting to more than Rs. Five lakh.

Briefly the facts are that the respondent/ workman was dismissed from services after holding an enquiry into the charges of misconduct against him. After his dismissal an application under Section 33(2) (b) of the Act was made by the management before the Tribunal. This application 33(2) (b) of the Act was dismissed by the Tribunal. After dismissal of the application the workman made an application under section 33C(2) of the Act claiming arrears of salary on the ground that he was presumed to be in continuous service as his dismissal was not approved. The management preferred writ petition No. 7021/2001 against the order of dismissing of application under Section 33(2) (b) of the Act and informed the Labour Court No.VII where application 33C (2) of the Act was pending, about the pendency of the writ petition. However, management gave its own calculations of its arrears as Rs.4,70,225/-. The Labour Court allowed the application under Section 33C(2) and directed the management to pay

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a sum of Rs. 4,70,000/- vide impugned order, since there was no stay granted by the High Court against the order of dismissal of application under Section 33(2) (b) of the Act. The writ petition filed by the petitioner against the order under section 33(2) (b) of the Act was allowed by the High Court vide its judgment dated 10.11.2004 and the matter was remanded back to the Labour Court for deciding afresh in view of the observations made by High Court in its judgment. Labour Court, in pursuance of directions of the High Court, decided the matter afresh and allowed the application vide its order dated 26.5.2005 against which the workman preferred no writ petition.

The present writ petition has been filed by the writ petitioner for setting aside the order under Section 33C(2) of the Act passed by the Labour Court because of the sole reason of dismissal of earlier application under Section 33(2) (b) of the Act, which dismissal has been reversed by the Labour Court after the writ petition of the petitioner was allowed and become final.

Writ petition is opposed by learned counsel for the workman on the ground that workman had already got the order dated 17.9.2003 executed and had received money and the writ petition has become infructuous. I consider that the writ petition cannot be infructuous merely because the workman had been able to extract money on the basis of the order which was passed on the wrong premises. The very basis of the order dated 17.9.2003 was that the application under Section 33(2) (b) of the Act had been dismissed. This basis got knocked out when the application was allowed by the Labour Court vide order dated 26.5.2005 after the judgment of High Court in the writ petition. The order dated 17.9.2003, therefore, has to be set

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aside. I therefore set aside the order dated 17.9.2003. I consider the workman cannot be rewarded for misconduct. He remained absent from the duty in September 1990 to August 1991 for 161 unauthorisedly and this misconduct got proved. He cannot be allowed to draw salary for the entire period when he was not even in service and had not served the management. There is no proof or evidence that the workman had remained unemployed all along after termination of his service. I consider a delinquent cannot be rewarded for his misconduct. The workman took away a huge amount of Rs. 4,70,000/- and pocketed the same without rendering any service on the basis of an order later reversed. This amounts to unjust enrichment, more so when the conduct of the workman <sup>showed</sup> that he was not interested in attending the job. I, therefore, consider that plea of the workman that since Award amount has already been paid, DTC should not be directed to recover this amount, has no force.

I, therefore, allow this writ petition. The order dated 17.9.2003 is hereby set aside.

December 15, 2006  
Kb

  
SHIV NARAYAN DHINGRA, J

C.M. 11761/074/5151

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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 21015/2005

D.T.C.

..... Petitioner

Through: Ms. Avnish Ahlawat with Ms. Latika  
Chaudhary & Mr. Zaman, Advocates.

Versus

SH. BRAHMA PRAKASH & ANR.

..... Respondents

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**ORDER**

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**28.01.2011**

**CM No.11761/2007 (of the petitioner u/S 144 CPC)**

1. This application has been filed in a disposed of writ petition.
2. This writ petition was preferred against the order of the Labour Court under Section 33C(2) of the I.D. Act finding a sum of ₹5,69,527/- to be due from the petitioner DTC to the respondent no.1 workman. However, before this writ petition could be considered, the respondent no.1 workman in execution/implementation of the order, recovered a sum of ₹4,70,225/- by attachment of the Bank Account of the petitioner DTC. It was *inter alia* the

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case of the respondent no.1 workman in opposition to this writ petition that the order having been already implemented, the writ petition is infructuous. The said argument was negatived in the judgment/order dated 15<sup>th</sup> December, 2006 disposing of the writ petition where it was observed that the petitioner shall be entitled to recovery of the said amount.

3. This application has been filed for the said purpose. Notice thereof was issued and a reply filed on behalf of the respondent no.1 workman. However, thereafter the respondent no.1 workman has stopped appearing with effect from 13<sup>th</sup> March, 2008. The counsel for the petitioner has been heard.

4. Section 144 of the Civil Procedure Code empowers the Court which passed the decree or order, to on the application of any party entitled to any benefit by way of restitution cause such restitution to be made so as to place the parties a position in which they have occupied but for such decree or order.

5. The present writ petition was in exercise of powers of this Court of certiorari; else the Court which passed the decree or order in pursuance to which money has been recovered from the petitioner DTC is the Labour

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Court/Industrial Tribunal. The remedy of the petitioner DTC for restitution is before the Labour Court/Industrial Tribunal only. Even otherwise, since the respondent no.1 workman has stopped appearing before this Court, it is felt appropriate that the Labour Court/Industrial Tribunal is better equipped to enforce recovery from the respondent no.1 workman.

6. The application is therefore disposed of with the liberty to the petitioner DTC to approach the Labour Court/Industrial Tribunal.

No order as to costs.

**JANUARY 28, 2011**  
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**RAJIV SAHAI ENDLAW, J**