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

+ W.P.(C) 8111/2021, CM APPL. 25200/2021

JIYA LAL AND OTHERS ..... Petitioner

Through: Mr. Krishna Chandra Dubey, Adv.

versus

MANAV BHARTI INDIA INTERNATIONAL SCHOOL ..... Respondent

Through: Mr. R. K. Vats and Ms. Kumar Alka, Advs.

% ***Date of Decision: 29th July, 2022***

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. The present writ petition has been filed challenging the impugned order dated 7th April, 2018 whereby the learned Labour Court has held that the application under Section 33 C (2) of the Industrial Disputes Act, 1947 (hereinafter referred as "the Act") is not maintainable and further held that even if the application under Section 33 C(2) of the Act is deemed to be maintainable, the petitioners are not entitled to the relief claimed.
2. Mr. Krishna Chandra Dubey, learned counsel for the petitioner submits that the award passed by the learned Labour Court is erroneous in

nature as the petitioners under Section 33 C(2) of the Act were entitled to relief of the computation of arrears of their salaries. It has been stated that the respondent-management had never disputed that petitioners were entitled to their salaries as per Section 10 of Delhi School Education Act, 1973.

3. Learned counsel for the petitioner submits that if there is an entitlement under statute, there is no need of any award or settlement for the purpose of computation as provided under Section 33-C(2) of the Act.

4. Learned counsel for the petitioner has further submitted that the learned Industrial Tribunal has failed to appreciate that it was an undisputed position, that the petitioners were entitled to their salary in terms of Section 10 of Delhi School Education Act, 1973, fixation of their salaries as per the 5th and 6th Pay Commission and payments of arrears, if any.

5. Learned counsel for the petitioner has placed reliance in the case of ***MCD V. Ganesh Razak and Anr.*** *(1995) 1 SCC 235)*. It has been submitted that respondent did not come out with the computation of their salaries showing that the arrears as per 5th and 6th Pay Commission were paid to the petitioners. It has been submitted that the petitioners were not fully paid their arrears as per 5th and 6th Pay Commission and the affidavit filed by the respondent was false.

6. Reliance has also been placed upon ***Jeet Lal Sharma v. POLC-IV and Anr. 2000(5) SLR 9***.

7. Learned counsel submits, that to invoke the jurisdiction of the learned labour Court under Section 33 C(2) of the Act, either of the two ingredients must be present i.e. firstly, the workman should be entitled

to receive from the employer any money or any benefit which is capable of being computed in terms of money and secondly, a question must have arisen as to the amount of money due, or as to the amount at which such benefit should be computed.

8. Learned counsel submits that since the petitioners are entitled under Section 10 of Delhi School Education Act, 1973 the application under Section 33-C(2) of the Act was maintainable.

9. Learned counsel submits that the matter be remanded back to the learned Labour Court for conducting the exercise of computation so as to ascertain whether the claim has been met or not.

10. Mr. R. K. Vats, learned counsel for the respondent has vehemently opposed the present writ petition stating that the writ petition itself is not maintainable.

11. Learned counsel for the respondent submits that jurisdiction of this Court under Article 226 of Constitution of India is limited. It has been submitted that this Court cannot act as a Court of appeal. It has been submitted that the award could have been interfered with only, if there is an error of law or there is perversity in the order of the learned Trial Court.

12. Learned counsel submits that the learned Trial Court on the correct proposition of law has held that the application under Section 33 C (2) of the Act is not maintainable.

13. Learned counsel has also relied upon the ***Harjinder Singh Vs. Punjab State Warehousing Corporation (2010) 3 SCC 192*** and has submitted that the present petition is liable to be dismissed.

14. I have heard the learned counsel for the parties and perused the record carefully.

15. Section 33 C (2) of the Industrial Disputes Act, 1947 which reads as under:

> *"(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.]"*

16. A bare perusal of Section 33 C(2) of the Act makes it clear, that it has following ingredients:

> (1) Workman should be "entitled to receive" from the employer any money or any benefit capable of being computed in terms of money;
> (2) the question should have arisen as to :-
> (3) the amount of money actually due:
> (4) the amount on which money should be computed.

17. Section 10 of Delhi School Education Act, 1973 reads as under:

> *"10. Salaries of employees.—(1) The scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognised private school shall not be less than those of the employees of the corresponding status in schools run by the appropriate authority: Provided that where the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of any recognised private school are less than those of the employees of the corresponding status in the*

schools run by the appropriate authority, the appropriate authority shall direct, in writing, the managing committee of such school to bring the same up to the level of those of the employees of the corresponding status in schools run by the appropriate authority: Provided further that the failure to comply with such direction shall be deemed to be non-compliance with the conditions for continuing recognition of an existing school and the provisions of section 4 shall apply accordingly. (2) The managing committee of every aided school shall deposit, every month, its share towards pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits with the Administrator and the Administrator shall disburse, or cause to be disbursed, within the first week of every month, the salaries and allowances to the employees of the aided schools."

18. To sum up the arguments, the case of the petitioner is that according to Section 10 of Delhi School Education Act, 1973, the petitioners are entitled for their complete salaries and arrears as per 5th and 6th Pay Commission. The learned Trial court should have verified whether the entire pay/arrears have been paid or not. There is no need for any award or settlement for the purposes of exercising jurisdiction under Section 33 C (2) of the Act.
19. Per contra, the stand of the respondent is that firstly, this Court in its writ jurisdiction cannot re-appreciate the material on record and substitute its' view. Secondly, in absence of any, perversity or patent error of law, this Court cannot interfere into the award.
20. Further argument is that, in view of the settled law, the learned Labour Court akin to the executing court under Section 33 C(2) of the Act could not have adjudicated the disputed claim.
21. Coming first to the issue of jurisdiction of this Court under Article 226 of Constitution of India, in the case of ***Harjinder Singh Vs. Punjab***

State Warehousing Corporation (2010) 3 SCC 192 it has been *inter alia* held as under:

> *" 10……..There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding……."*

22. Thus, on the basis of the discussion made hereinabove and in view of the settled law laid down, this Court can interfere into the award passed by the learned Labour Court only if there is a patent error of law or there is perversity in the order of the learned Labour Court. Perversity has been defined as where the Trial Court has decided the matter without any evidence or material being on record or has decided the matter contrary to the material is evidence on record.

23. In the present case, the learned Trial Court in its award, framed the following issues:

1 . Whether the liberty to approach the appropriate government was granted by the Hon 'ble High Court in the W.P.C. No. 9119-291/2006 vide order dated 19.04.2011 only to the petitioners in the said writ petition and as such the applicants being not a

Petitioner in the said petition is not entitled to file the present petition? OPM

2. Whether the claim of the applicants is not maintainable in view of the objections raised by the management in paragraph no. 3 of the preliminary objection in the written statement? OPM

3. Whether the workman is not entitled to enhanced wages/arrear of wages in view of the preliminary objection no. 4 taken in the written statement by the management? OPM

4. Whether the claim of the applicants are hit by delay and latches, if so, its effect? OPM

5. Whether the application under section 33-C(2) of the lD Act is maintainable in the present form? OPW

6. Whether the petitioners are entitled to the relief as claimed in the statement of claim, if so, to what amount and for which period? OPW

7. If issue no. 6 is answered in affirmative, whether the applicants are entitled to claim interest upon the said amount, if so, at what rate and for which period? OPW

8. Relief.

24. The issue Nos. 5 and 6 are relevant for consideration in the present writ petition since other issues have been decided in favour of the petitioner.

25. The finding of the learned Labour Court in deciding the issue no. 5 and 6 are reproduced herein below:

"16. Both these issues are interconnected and hence are being taken up together.

Ld. ARM argued that the claimants are claiming arrears of their salary as per section 10 of Delhi School Education Act, 1973 and as per the reports of 5th and 6th pay commission's from the date of their initial joining i.e. from 1995 to 1998. When they had joined the management initially, they were recruited as daily wagers. Their service was regularized 2005 by issuing appointment letters from the back date. Before issuance of appointment letters, the claimants had given general demand notice to the management upon which matter was settled between the parties in which it was agreed that the management would issue appointment letter from the date of their initial joining and also, they would be provided Minimum wages as notified by Government of Delhi from time to time. They were regularized in 2005. From the date of their initial joining i.e. 1995 to the date of regularization i.e. 2005, they were granted minimum wages. Only after regularization in 2005, they brought in regular pay band. He further submitted that it has been observed by POIT and High court that the management had been providing them the wages as per section 10 of Delhi School Education Act, 1973 and report of 5th pay commission. The management is already providing them wages as per the recommendations of 6th pay commission w.e.f. 2009. The arrears of 6th pay commission have already been paid. He argued that it has not been admitted by the management that services of the claimant were regularized from the date of their initial joining. It has not been decided by any Foram that they were regularized from the date of their initial joining. So, this court cannot decide under section 33(c)(2) of ID Act 1947 that the claimants be given regular pay scale from the date, of their initial joining because the date, month and year of their regularization is highly under dispute and disputed questions cannot be decided by the Labour court under Section 33(c)(2) of ID Act.

Ld. ARW replied that the petition under section 33 (c) (2) of the ID Act is very much maintainable because the management ad issued appointment letters to the claimants mentioning that the management was pleased to appoint them on the post of Chowkidaar and Maalis on the wages notified by Government/ as per the rules. He submitted that as per section 10 of Delhi School

Education Act, 1973, the scales of pay and allowances, medical facilities, pension, gratuity, PF and other prescribed benefits of the of the employees of recognized private school shall not be less than those of the emp1oyees of corresponding status in schools run by the appropriate authority. By virtue of appointment letters and section 10 of Delhi Schoo1 Education Act, 1973, the claimants are entitled to Computation of their arrears from the date of their initial joining.

17. It becomes clear from award passed in ID No. 171/05 by Ld. POIT on 04.04.2012 that the claimants had given general demand notice dated 18.08.2003 to the management interalia for following Demands:-

> *2. All the employees should be given their salaries as per Minimum Wages notified by the Government from the date of their appointment and arrears thereof.*
>
> *3. The employees, who have not been issued with their identity cards, should be given the same immediately.*
>
> *4. All employees should be given the annual increment of 15% in their salary·.*

18. It is the admitted position of both parties that pursuant to the general demand notice, there was a settlement between the parties on 14.10.2003 with following terms and conditions:

> *I. The management shall provide its workers 2 pairs of' summer dress and one pair of' socks and shoes and one pair of winter dress (after every three years).*
>
> *2. Managing agreed to grant 16 leaves to workers which included 13 Religious leaves and 3 national leaves. In addition to that 15 earned leaves, 25 medical leaves and 8 casual leaves were also admitted to be granted.*
>
> *3. Management agreed to issue appointment letter having their names, post and old date of appointment.*
>
> *4. Management agreed to grant Rs. 50, Rs. 100/- and Rs. 150/- to the employees those who have completed 3 years, 5*

years and more than 5 years respectively in addition to minimum wages.

5. Management will take work for 8 hours and will pay overtime if, it exceeds

6. Management agreed to grant bonus every year and also for the year 2002-2003 on the eve of Diwali.

7. Management will provide them designation as per the work assigned to workers and shall take work strictly as per their designations.

8. A1wwgement shall grant advance, in case of need of any

employee, looking into the length of service undergone.

9. The employees, who have not been issued with their identity cards should be given the same.

19. It becomes clear from condition no. 3 *of settlement deed dated 14.10.2003 that the management would issue appointment letter to the claimants from the date of their initial joining. But there is condition no. 4 also that the management would provide them minimum wages. The claimants cannot be allowed rely upon one condition favouring them and leave the other going against them He is to rely upon the deed as an organic whole. It is correct that as per Section 10 of Delhi School Education Act, 1973, claimants are entitled to pay scale. But by entering into settlement with management, they had substituted the provisions of section 10 of Delhi School Education Act, 1973 with settlement, as per which, the management was bound to give them Minimum Wages. That conclusion finds corroboration from their appointment letters in which it is mentioned that pursuant to their applications and requests dated 1995 and 1998 for the posts of Maalis and Chowkidar, the management was pleased to appoint them on the respective posts w.e.f. 1995 and 1998 on the wages as notified by the Government. The words "wages as notified by the Government" do not mean that management had promised them to bring in regular pay scale from the date of their initial appointment. Those words have been explained by condition no. 4*

of settlement deed, as per which, the engagement was to provide them minimum wages. So, the word "wages" mentioned in appointment letters means the minimum wages.

20. Moreover, it has neither been admitted by the management nor decided by any competent court that the claimants are entitled to regular employment from the date of their initial appointment in 1995 and 1998.

For payment of wages as per 5th pay commission, it is mentioned in the judgment of the Hon'ble High Court that the school 1ad been paying the emoluments in accordance with the law for the last atleast 4 years. It was observed by Ld. POIT in Para 37 and 38 of the Award dated 4.4.2012 that the claimants had admitted in cross examination that they were getting salary and benefits as per 5th pay commission since September 2007 and were also getting salary and benefits as per 6th pay commission w.e.f. April 2009. Ld. POIT came to the conclusion that since payment of wages as per 6th pay commission had been admitted by the claimants, there was no justification in their claim for hike of 15% in their salary over and above the recommendations of 6th pay commission.

The claimant's were asked in cross examination whether they had been paid arrears of 6th pay commission and their reply is in negative. But, their reply is not supported by the documents confronted to them in cross examination.

Jiya Lal was paid 60% and 40% of arrears of 6th pay commission vide documents Ex.WW1/M2 and Ex.WW1/M3. It becomes clear from the wage statement for the month of October 2017 Ex.WW1/M4 that he is getting salary as per the recommendations of 6th pay commission.

Shyam Lal was paid 60% and 40% of arrears of 6th pay commission vide documents Ex.WW1/M1 and Ex.WW1/M2. It becomes clear from the wage statement for the month of October 2017 Ex.WW1/M3 that he is getting salary as per the recommendations of 6th pay commission.

> *Suresh was paid 60% and 40% of arrears of 6th pay commission vide documents Ex.WW1/M2 and Ex.WW1/M3. It becomes clear from the wage statement for the month of October 2017 Ex.WW1/M4 that he is getting salary as per the recommendations of 6th pay commission.*
>
> *21. In view of above discussion, it is held that petition under section 33(c)(2) of ID Act, 1947 is not maintainable. Even if, it is deemed that the same is maintainable, the claimant are not entitled to computation of any amount. These issues are decided in favour of the management and against claimants."*

26. The petitioners in the present case, allegedly joined the services of respondent-management in 1995 and 1998. However, subsequently, by virtue of the settlement, the appointment letters were given to them in 2005 from their date of initial joining i.e. 1995 and 1998. A settlement was entered into, in the year 2003 between the petitioners and the management, whereby it was agreed that the minimum wages will be paid to the petitioners –workmen. The plea of the petitioners is that they were taken as regular employee in the year 2005.
27. The case of the respondent-management is that they started giving pay-scale from September, 2007, pursuant to the statement made by the respondent-management in W.P.(C) Nos. 9119-29/2006. The plea of respondent-management is that till August, 2007 the petitioners were given salary on the minimum wages as per the settlement arrived into between the parties.
28. Thus, the dispute put into a very narrow compass, is whether the petitioners-employees are entitled to pay scale from 2005, when the

appointment letter was issued or whether they have been rightly given the pay-scale from September, 2007. The plea of respondent-management is that till, August, 2007, the petitioners were given salary on the minimum wages as per the settlement agreement which has already been the subject matter of earlier Industrial Disputes, in which an award was passed on 4th April, 2012. It is not disputed by both the parties, that that the award dated 4th April, 2012 has not been challenged.

29. Even, at the cost of repetition, it may be reiterated, that the petitioner's case is that they are entitled for full pay scale as per Section 10 of Delhi School Education Act, from 2005, when the appointment letter was issued. The second argument is that the settlement cannot oust the statute.

30. Before, proceeding further, it is advantageous to refer to the case of ***M/s Bombay Chemical Industries v. Deputy Labour Commisioner & Anr***. 2022 (2) SCALE 903 in which it was *inter alia* held as under:

> *"6……..As per the settled proposition of law, in an application under Section 33(C)(2) of the Industrial Disputes Act, the Labour Court has no jurisdiction and cannot adjudicate dispute of entitlement or the basis of the claim of workmen. It can only interpret the award or settlement on which the claim is based. As held by this Court in the case of Ganesh Razak and Anr. (supra), the labour court's jurisdiction under Section 33(C)(2) of the Industrial Disputes Act is like that of an executing court. As per the settled preposition of law without prior adjudication or recognition of the disputed claim of the workmen, proceedings for computation of the arrears of wages and/or difference of wages claimed by the workmen shall not be maintainable under Section 33(C)(2) of the Industrial Disputes Act. (See Municipal*

Corporation of Delhi Vs. Ganesh Razak and Anr. (1995) 1 SCC 235).

In the case of Kankuben (supra), it is observed and held that whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33C (2) of the ID Act. It is further observed that the benefit sought to be enforced under Section 33C (2) of the ID Act is necessarily a preexisting benefit or one flowing from a pre-existing right……".

31. I consider that a bare perusal of the abovesaid judgment makes it crystal clear that under Section 33 C (2) of the Act, the learned Labour Court has no jurisdiction to adjudicate upon the entitlement or the basis of the claim of the workman. Here, the disputed question is that whether the petitioner-workmen are entitled to regular pay-scale from 2005, when the appointment letter was issued. This Court considers that the learned Labour Court could not have gone into this disputed question while exercising jurisdiction under Section 33 C (2) of the Act. This becomes more pertinent in view of the settlement entered into between the parties in 2003. This settlement has already attained finality in view of award dated 4th April, 2012.

32. In view of the aforesaid discussions, the present writ petition along with pending application is dismissed.

DINESH KUMAR SHARMA, J

JULY 29, 2022
Pallavi