



2026:DHC:2658



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

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Judgment pronounced on: 30.03.2026+ **W.P.(C) 2918/2026 and CM APPLs.14098/2026, 14099/2026, 14100/2026**

DIVISION RAILWAY MANAGER & ORS.Petitioners

Through: Mr. Gaurav Mishra, Advocate.

versus

RISHI HITKARIRespondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****JUDGMENT**

1. The present petition has been filed by the petitioner assailing an award dated 10.04.2023 and a subsequent order dated 10.06.2025 passed in LCA No.18/2018 under Section 33C (2) of the Industrial Disputes Act, 1947 (hereinafter referred as "*the ID Act*") by the Central Government Industrial Tribunal-cum-Labour Court-I, New Delhi (hereinafter referred as "the CGIT").

2. The background of the matter is that a complaint came to be filed by the respondent/workman before the CGIT under Section 33C (2) of the Industrial Tribunal Act, 1947 (hereinafter referred as "*the ID Act*") alleging that while the respondent/workman was posted at the Moradabad Division, U.P between 12.02.2007 to 19.10.2007, despite duly reporting for the duty, he was paid salary only for the month of June 2007.

3. Consequently, *vide* the impugned award dated 10.04.2023, the CGIT upheld the claim of the respondent/workman and accordingly directed the



2026:DHC:2658



petitioner to pay an amount of Rs. 97,067/- along with interest for the concerned period to the respondent/workman.

4. Against the impugned award the petitioner filed an application before the CGIT seeking recall/review of the impugned award along with all consequential recovery and execution proceedings. The said application *vide* impugned order dated 10.06.2025 came to be dismissed.

5. Aggrieved, the petitioner has filed the present petition seeking to set aside the impugned decisions.

6. Learned counsel on behalf of the petitioner submits that the impugned award has been passed by the CGIT beyond its jurisdiction and ought to be set-aside inasmuch as: -

- i. proceedings under Section 33C (2) of the ID Act being in nature of execution proceedings are maintainable only for computation or enforcement of a pre-existing right arising from a prior adjudication, settlement, award, statutory rule or service conditions and a court cannot assume an adjudicatory role thereunder. Since the petitioner has disputed the entitlement of the respondent/workman to the wages/salary for the said period itself, a dispute to foundational issues related to reporting, posting and performance of duty ought to have been adjudicated and determined under Section 10 of the ID Act.
- ii. transfer order by itself does not confer an automatic right to wages, and that under settled principles of service jurisprudence, an employee is required to report at the transferred place and offer joining, and wages accrue only if work is actually performed or if the employee establishes that he was ready and willing to work but was unlawfully prevented by the employer. Such issues necessarily required



2026:DHC:2658



adjudication and could not have been presumed or summarily decided in proceedings under Section 33-C(2) of the ID Act.

- iii. the law is well settled that jurisdiction cannot be conferred by default and unrebutted evidence cannot substitute for a statutory precondition of a pre-existing right. However, contrary to the aforesaid, the CGIT without examining the maintainability of the claim under Section 33C (2) of the ID Act, considered the same proven merely on the basis that the testimony of respondent/workman remained unrebutted.
- iv. CGIT overlooked the principle of “no work no pay” and failed to appreciate that whether the respondent would fall within any exception to the said principle was in itself disputed.
- v. without determining whether the respondent possessed any pre-existing rights capable of computation under Section 33C(2) of the ID Act, by awarding interest, the CGIT enlarged its jurisdiction in a manner which is impermissible while exercising functions of an executing court.

7. Learned counsel further submits that the subsequent order dated 10.06.2025 passed by the CGIT also suffers from the same jurisdictional infirmity as the impugned award inasmuch as the CGIT again failed to examine whether the impugned award suffered from a fundamental lack of jurisdiction and instead declined interference on procedural considerations.

8. At the outset, reference is apposite to the Section 33C(2) of the ID Act. The same reads as under: -

“33C. Recovery of money due from an employer:-

.....(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:].....”

9. In ***Jeet Lal Sharma vs. Presiding Officer, Fourth Labour Court and Anr.***, 2000 SCC OnLine Del 277 the ambit and scope of powers of a court under Section 33C (2) of the ID Act was restated/clarified by a coordinate Bench of this Court in light of the various judgments rendered by the Supreme Court as under: -

“5. For the exercise of jurisdiction by the Labour Court following ingredients are essential:

- “(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—*
 - (a) the amount of money actually due;*
 - (b) the amount on which money should be computed.”*

6. The expression “if any question arises as to the amount of money due” embraces within its ambit any one or more of the following kinds of disputes:

- (1) whether there is any settlement or award as alleged?*
- (2) whether any workman is entitled to receive from the employer any money at all under and any settlement or an award etc.?*
- (3) if so, what will be the rate or quantum or such amount? And*
- (4) whether the amount claimed is due or not?*

*7. To invoke the jurisdiction of the Labour Court under the present S. 33-C(2) either of the two ingredients must be present. The first is that a workman must be entitled to receive from the employer any money or benefit which is capable of being computed in terms of money and the second one is that a question must have arisen as to the amount of money due, or as to the amount at which such benefit should be computed. A plain reading of the section shows that the Labour Court has jurisdiction to decide both these ingredients. Thus in a case where both these ingredients are satisfied or either these ingredients is satisfied, the Labour Court will have jurisdiction to determine the question. The Legislature has empowered the Labour Court to decide a dispute as to the right of workman to receive from the employer any money or any benefit which is capable of being computed in terms of money and also has authorised it to decide the question as to the amount of money due or as to the amount at which such benefit should be computed. (See *Ambica**



Mills Ltd. v. Second Labour Court [1967-II L.L.J. 800].

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11. The Labour Court in the impugned order has understood the ratio of the judgment in the case of Ganesh Razak [1995 (1) L.L.N.402] (vide supra), in a narrow sense. The Supreme Court has held that the workman shall be entitled to receive money if there is pre-existing right and this entitlement or pre-existing right is found in twin expressions:

- (i) entitlement has been earlier adjudicated upon; or*
- (ii) entitlement is recognised by the employer.*

The Labour Court in the impugned order while rejecting the application of the petitioner herein as not maintainable had observed that there is no claim of petitioner that there is any prior adjudication or settlement as regards entitlement. Thus the entitlement as recognised by the employer is taken in the form of “settlement”. This is not so. There can be recognition of the entitlement by the employer not only in the form of “settlement” but as per service conditions also. Thus understanding the expression “recognised by the employer” only when there is settlement is clearly erroneous. A person may be entitled to receive money and there may be pre-existing right even in the absence of settlement (here “settlement” is understood as defined under S. 2(p) of the Industrial Disputes Act, 1947) but when such right is recognised as per service conditions.

12. When the claim is based on adjudication or settlement it poses no difficulty. However there may be cases where the workman would be held entitled to receive the money as pre-existing right on the basis of the agreement between the employer and employee or as per established service conditions which have culminated into right in favour of the workman. Take for example, when a workman, is not paid his wages for a particular period, he shall be entitled to file application under S. 33-C(2) of the Act claiming wages for that period as he is entitled to receive the same at the rate agreed upon and at which the employer has been paying to him in the past. There is no adjudication or settlement out he is entitled to receive the wages of the period in dispute. This is as per the terms of the employment. Likewise, in a case where the workman is getting the wages in a graded pay scale, he has a right to receive increment every year. But if for a particular year increment is not released by the employer, workman shall be entitled to file application under S. 33-C(2) claiming the said increment as he has pre-existing right and he is entitled to receive such increment which can be stopped only by way of punishment as a result of departmental enquiry or when the workman is not allowed to cross the efficiency bar. Same may be the position in respect of the payment of minimum bonus. Or, where the workman claims overtime wages and the employer does not deny the right to it but only denies the claim on the ground that workman had not worked overtime. In such cases the



Labour Court will have the jurisdiction to decide the claim *Chandra Extrusion Products, Lucknow v. Miss Kishore Tripathi reported in 1986 (2) L.L.N. 102.*

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14. *The point which is emphasised is that entitlement to receive money, i.e., pre-existing right can be based on—*

- (1) *adjudication;*
- (2) *settlement;*
- (3) *service conditions.*

If the right to get a particular benefit is there, the application under S.33-C(2) would be maintainable and jurisdiction of Labour Court will not be barred merely because employer has denied the same.

15. What is the meaning of the expression “entitlement to receive. No doubt it is referable to pre-existing right. However where the workman claims a benefit flowing from a pre-existing right and approaches the Labour Court under S. 33-C(2) for computation of the” right in terms of money and the employer disputes the existence of the right, the Labour Court will have the jurisdiction to determine the question, whether the right exists and if the existence of right is established then to proceed to compute the benefit flowing therefrom in terms of money or on its decisions recovery proceedings can start (New Taj Mahal Café private Ltd. v. Labour Court reported in 1970 (21) F.L.R. 199 and East India Coal Company, Ltd. (vide supra). In deciding the maintainability of the application under S. 33-C(2) what is to be looked at is the claims set up in the application and not what the other side contends in its reply. The fact that the employer by his plea raises some dispute, does not mean that jurisdiction of Labour Court to deal with the question is taken away.”

(emphasis supplied)

10. This Court in *Jeet Lal Sharma* (supra) observed that when a benefit claimed flows from a pre-existing right, mere denial of its entitlement by an employer does not oust the jurisdiction of a court under Section 33C(2) of the ID Act. A court can determine/establish existence of such a right and thereafter, if warranted, proceed to compute the benefits flowing therefrom. The Court categorically opined that when a workman is entitled to receive wages/salary as per the terms of his employment/service conditions, in case



of non-payment of the same, workman can file an application under the said section against the employer and denial of such entitlement by itself would not oust the jurisdiction of the concerned Court.

11. Evidently, the petitioner has not disputed the fact that the respondent/workman is an employee of the petitioner and has been on payroll of the petitioner as per the service rules/conditions. Thus, in terms of the judgement laid down by this Court in *Jeet Lal Sharma* (supra), claim of respondent/workman clearly stems from a pre-existing right i.e., the applicable service condition/s. The same can be adjudged in the proceedings initiated under Section 33 C (2) of the ID Act.

12. As far as the determination of entitlement of respondent/workman to the claim is concerned, it is noticed that the CGIT considered that the petitioner neither cross-examined the witness/es nor led any evidence. Accordingly, after perusing the evidence adduced by the respondent/workman, the CGIT upheld the claim of the respondent/workman by observing that there exists no reason to disregard the testimony of the respondent/workman which remains unrebutted in the aforesaid conspectus. The relevant portion of the impugned award reads as under:

“4. The claimants filed their affidavit in lieu of examination in chief and examined themselves as Ex.WW1, Ex.WW2 Ex.WW3 and Ex.WW4. The examination in chief is on the similar lines as taken in the statement of claim. Ex.WW1, Sh. Rishi Hitkari relied upon documents transferred order from Delhi to IRCA office to Moradabad Division, copy of letters 1.08.2012 to 24.06.2014 regarding the service rendered during 12.02.2007 to 19.10.2007 was paid salary only for the month of June 2007 through bank transfer. The salary for remaining period was not paid to the deponent despite repeated request oral and in writing as well Ex.WW1/2 (Colly) and legal notice dated 4.4.2017 as Ex.WW1/3. The management never appeared to cross examine the witness, hence the cross examination was treated as nil.



5. *The Management did not lead any evidence and hence their right to lead evidence was closed on 19.10.2022.*

6 *I have perused the records and heard the claimant. The claimant is claiming for unpaid salary of Rs.97,067/-. Claimant have examined themselves as witness and his testimony have gone unrebutted. The management never appeared to cross examine them. In such circumstances, I do not find any ground to not believe the unrebutted testimony of the claimant.*

6. *During the course of arguments, it was argued on behalf of the claimants that under the provision of the ID Act, the Tribunal is empowered to grant interest on the due amount and litigation expenses. For power to grant interest in proceedings under Section 33 C(2) of the ID Act, he relies upon a division bench judgment of Hon'ble Gujarat High Court in **Manager, Naaz Cinema vs Vasantben Rameshbhai Ghumadiya** LPA No. 1198 of 2009 decision dated 31.03.2011. It was argued by the Ld. AR of the claimants that the provisions of Order XXI of the Code of Civil Procedure are not applicable to the proceedings of the Labour Court and hence the principle that an executing court has no power to award interest is not applicable to the Labour Court.*

7. *Considering the object of the ID Act which is a social welfare legislation and the action of the management in not paying even the minimum wages to the claimants, I am of the view that this is a fit case to grant interest in favour of the claimants on the due amount.*

8. *In view of the above, the management is directed to pay the amount to the claimant of Rs. 97067/-, along with interest @6% p.a. w.e.f. 20.10.2007 to till the dates, the amounts are paid. An order is passed accordingly. File, after completion, be consigned to record room."*

13. *Vide the subsequent impugned order dated 10.06.2025, the CGIT dismissed the review/recall application of the petitioner by observing that (i) neither any one appeared on behalf of the petitioner after filing of the Written Statement on 20.08.2018 nor any cogent rationale had been stated for the said absence (ii) no firm argument was made by the petitioner in its Written Statement against the claim of the respondent/workman and instead*



2026:DHC:2658



the same merely denied the facts alleged in the claim application (iii) no record pertaining to any departmental procedure initiated against the respondent/workman for failing to report for his duty for the concerned period has been produced.

14. As noted above, the petitioner neither led any evidence nor appeared for cross examining the witness/es, virtually abandoning the proceedings before the CGIT. A perusal of the written statement filed before the CGIT reveals that the same merely denies the factual claims of the respondent/workman without any evidence to corroborate/substantiate the said denial including any record and/or averment pertaining to any action initiated/notice issued to the respondent/workman for his alleged absence from work for the concerned period. Thus, considering the conduct of petitioner and also absence of any evidence to rebut the claim, and considering the testimony and evidence placed on record by the respondent/workman, the CGIT determined respondent/workman entitled to salary/wage for the concerned period. In the given factual conspectus, this Court finds no infirmity in the findings rendered by the CGIT, so as to warrant interference in the present proceedings.

15. Accordingly, the present petition is dismissed. Pending applications also stands disposed of.

SACHIN DATTA, J

MARCH 30, 2026/sl