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

% Date of Decision: 08.10.2026

CNR No. DLHC010255232020

+ **W.P.(C) 6723/2020**

ASHOK KUMAR JHAPetitioner
Through: Ms. Ritu, Advocate alongwith
the
petitioner
versus

MANAGEMENT OF G.S. TELECOMMUNICATION LTD. &
ANR.Respondent
Through: Mr. C.P. Malik and Mr. Rohan
Bhatia, Advocates

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. The present challenge has been raised on behalf of the workman against the order dated 28.01.2020 passed by the learned Labour Court in LCA No. 341/16 (New), LCA/04/14 (Old), whereby the application filed under Section 33C of the Industrial Disputes Act, 1947 (hereinafter, the ID Act) came to be dismissed.
2. The facts, in a nutshell, are that the workman had approached the Labour Court under Section 33C of the ID Act, seeking a direction for payment of Rs.4,06,184/- towards his legal dues. The workman claimed that he had been employed as a driver since 02.02.2011 and that his last drawn salary was Rs.10,000/-. It was further claimed that he was being paid Rs.2,500/- and that the remaining salary was to be



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adjusted by the management, which had promised to deliver a plot measuring 25 square yards to him after three years.

3. The management raised a preliminary objection that the claim application was not maintainable, as there had been neither any prior settlement nor any adjudication of the amounts claimed. It was further claimed that the workman had taken an advance of Rs.50,000/- for the marriage of his niece and had joined the services of another employer as a driver. The management also denied the averments made in the claim application that the workman had been employed as a driver on 02.02.2011 and was drawing a salary of Rs.10,000/- per month. It was further denied that any such promise, as claimed, had been made. The learned Labour Court, while considering the objections, dismissed the claim application as not maintainable.

4. Before this Court, learned counsel for the petitioner contends that, for a claim application to be maintainable under Section 33C of the ID Act, no prior adjudication or settlement is necessary and that the application can be considered on the touchstone of the service conditions. In this regard, he refers to the decision of this Court in Jeet Lal Sharma v. Presiding Officer Labour Court-IV¹.

5. The petition is contested by the respondents, who submit that, in the present case, there are no established service conditions, as the claim application is bereft of any documents in this regard. Further, there is also no appointment letter, and all the averments made by the claimant stand denied and disputed, requiring a trial. It is contended that the claimant ought to approach the Labour Court under Section 10



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of the ID Act.

6. The relevant extracts from Jeet Lal Sharma (supra) are reproduced as under:

“In this case, the daily rated/casual workers of the Delhi Municipal Corporation had claimed the same pay as paid to the regular employees on the principle of “equal pay for equal work” because they were doing the same kind of work as the regular employees. The very basis of the claim was disputed by the Corporation as there was no earlier adjudication or recognition of the claim. As the dispute relating to entitlement is not incidental to the benefit claimed, it is outside the scope of the proceedings under S. 33c(2). The Court has no jurisdiction first to decide the workman's entitlement and then to proceed to compute the benefits so adjudicated on the basis of its power under S. 33c(2). The Court observed:

‘It is only when the entitlement has been earlier adjudicated or recognized by the employer or thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation, that the interpretation is treated as incidental to the Labour Court's power under S. 33c(2) like that of the executing court's power to interpret the decree for the purpose of its execution,’

Thus the crux of the matter is that the workman can file an application under Section 33-C(2) only when he is “entitled to receive” money, claimed by him. His entitlement to receive money is referable to pre-existing right which would be established if it has been earlier adjudicated upon or provided for i.e. recognised by the employer. This recognition can be either in the form of settlement or as per the service conditions.

The Labour Court in the impugned order has understood the ratio of the judgment in the case of Ganesh Razak (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

¹ 2000 SCC OnLine Del 277



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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 Section 2(p) of the Industrial Disputes Act, 1947) but when such right is recognised as per service conditions.”

*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 Section 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 but 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 Section 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. Kamal Kishore Tripathy reported in 1986 Lab IC 1478).***

On the other hand, if entitlement to receive money is in dispute, application under Section 33-C(2) will not be maintainable and the appropriate course would be to seek reference under Section 10 of the Act. In Ganesh Razak (supra) the workman were being paid on daily rate basis and they claim same pay as paid to regular employees on the principle of equal pay for equal work. It was necessary to first decide as to whether they were entitled to such a claim or not and therefore in the



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absence of such adjudication it could not be said that they were entitled to receive the same pay as paid to regular employees. As per existing terms they were only paid on daily rate basis. However, once such a right is adjudicated upon for subsequent proceedings thereafter, application could be filed, under Section 33-C(2) of the Act (See Director General (works) CPWD v. Ashok Kumar reported in 2000 LLR 67 (SC). Similarly, if a person is suspended and he is not paid subsistence allowance, say 50% of the wages as per the service conditions, he can file application under Section 33-C(2) of the Act, claiming subsistence allowance 50% as he is entitled to receive this money as per service conditions and this right is recognised by the employer as per service rules. **On the other hand if workman claims that suspension is illegal and he is. entitled to hundred percent wages during the period of suspension than such a claim would not be maintainable in an application under Section 33-C(2) of the Act as, there has to be first an adjudication as to whether suspension is legal or illegal before deciding the entitlement of the workman to receive hundred percent wages during the period of suspension. In such cases, instead of filing an application under Section 33-C(2), workman will have to raise industrial dispute by seeking reference under Section 10 of the Act challenging the suspension. Therefore, in order to come within the purview of this Section, a workman must be entitled to receive from the employer some “money” or “benefit”. This entitlement may depend upon an adjudication of the right or may depend upon interpretation of certain existing rights. If this entitlement depends upon an adjudication of the right for the first time, then the adjudication cannot come within the purview of this sub-section. The adjudication may also be dependent on interpretation or construction of certain terms on which two reasonable views are possible. If, on the other hand, the right is patently there but it has to be found out by reading of any document, settlement or award, that could be done within the purview of this sub-section. For instance, where the workman claims what ought to be the relation between him and his employer, remedy does not lie under this provisions. Likewise, the question of classification of the workman cannot be decided by the Labour Court under this Section. Such a question can be adjudicated on a reference by an Industrial Tribunal Under Section 10(1).**

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 Section 33-C(2) would be maintainable and jurisdiction of Labour Court will not be barred merely because employer has denied the same.



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What is the meaning of the expression “entitlement to receive”. Nodoubt 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 Section 33-C(2) for compulsion of the right in term of money and the employer disputes the existences 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 than to proceed to compute the benefit flowing therefrom in terms of money or on its decisions recovery proceedings can start (New Taj Mahal Cafe (P) Ltd. v. Labour Court reported in (1970) 2 LLN 51 and East India Coal Company Limited (supra). In deciding the maintainability of the application under Section 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.

*Now let us apply the aforesaid principles in the present case. In this case, Petitioner had claimed encashment of leave of 188 days, on his retirement. It cannot be disputed that it is one of the service conditions that Petitioner on his retirement would be entitled to encash his leave if it is lying to his credit. This is one of the service conditions and this service condition is a pre-existing right which entitles workman to get this claim. What is disputed is that the leave of 188 days was not due to the Petitioner and according to the Respondents there was only four days leave to his credit. As mentioned above. If the entitlement is based on service conditions, one does not have to take recourse to reference under Section 10 of the Act for adjudication of the matter. That situation would have become necessary only if there was a dispute about the entitlement to get the leave encashed. The dispute is not about the entitlement to get the leave encashed but about the number of days to which the Petitioner is entitled. Such a question could have been decided by the Labour Court in these proceedings. As mentioned above merely because employer disputes this aspect, is no ground to oust the jurisdiction of Labour Court under Section 33-C(2). The matter is to be looked into on the basis of claim made by the Petitioner in his application and not the reply filed by the management. **Once it is accepted that this is one of the service conditions of the workman that he would be entitled to get the leave encashed upto a particular limit, claiming this leave encashment by filing application under Section 33-C(2) would be admissible.** If there is a dispute as to how much leave was to credit of Petitioner which he could encash, such a dispute can be decided in these proceedings which is incidental to the main issue. **Adjudication can be about the entitlement and not when the claim is based on accepted service conditions.** The matter was not examined by*



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the Labour Court from this angle at all and therefore I hold that the order of the Labour Court is erroneous. The same is accordingly set aside. Rule is made absolute. It is held that application filed by the Petitioner under Section 33-C(2) of the Act is maintainable. The matter is accordingly remanded back to the Tribunal to decide the application of the Petitioner on merits.”

(emphasis supplied)

7. Indisputably, in the present case, there is neither an appointment letter nor any document evidencing the service conditions. The management has categorically denied the averments made in the claim application. Thus, neither the conditions enumerated under Section 33C of the ID Act nor those discussed in the aforesaid decision are satisfied. Accordingly, the challenge fails. Needless to state, in case recourse is taken to Section 10 of the ID Act, the same shall be considered on its own merits as this Court has not examined the contentions on the merits of the case.

8. In view of the above, the present petition is disposed of.

(MANOJ KUMAR OHRI)
JUDGE

OCTOBER 08, 2026

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