PART IX

EXECUTION OF EXISTING RIGHTS

Section 33C of the Industrial Disputes Act which deals with recovery of money due from the employer provides:

(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of chapter V-A or chapter V-B , the workman himself or any other person authorised by him in writing in this behalf, or, in the case, of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate government for recovery of money due to him, and if the appropriate government is satisfied that any money is so due, it shall issue a certificate for that amount to the collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(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 the 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."

(3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so think fit, appoint a commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour court and the Labour Court shall determine the amount after considering the report of the commissioner and other circumstances of the case.

(4) The decision of the Labour Court shall be forwarded by it to the appropriate government and any amount found due by the Labour Court may be recovered in the manner provided for in sub-section (1).

(5) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen.

Explanation:— In this Section "Labour Court" includes any court constituted under any law relating to investigation and settlement of industrial disputes in force in any State.

CENTRAL BANK OF INDIA v. RAJAGOPALAN
AIR 1964 SC 743

[Four clerks employed in the bank were assigned in addition to their normal duties as clerks, the duty to operate the adding machine provided for use in the bank. They claimed that for such extra work they were entitled to payment of Rs. 10/-per month as special allowance as provided in para 164-b (1) of the Shastry Award and accordingly filed an application under section 33 C (2) of the Industrial Disputes Act for ascertainment of the benefit receivable by them under the said provision of the award. The bank disputed their claim, and it was urged as a preliminary objection that such a claim, which required adjudication, was outside the purview of sction 33 C (2). The Central Government Labour Court before which the respondents made these applications overruled the preliminary objections raised by the bank and on the merits found that the said clerks were entitled to the special allowance under the relevant clause of the Sastry Award. The bank thereupon preferred an appeal by special leave against this order. Excerpts from the judgment of the court delivered by Gajendragadkar. J. follow :]

The principal contention which has been urged before us by the appellant is one of jurisdiction. It is argued that the Labour Court has exceeded its jurisdiction in entertaining the applications made by the respondents because the claims made by the respondents in their respective applications are outside the scope of S. 33 C (2) of the Act....

It is urged by the appellant that sub-section (2) can be invoked by a workman who is entitled to receive from the employer the benefit there specified, but the right of the workman to receive the benefit has to be admitted and could not be a matter of dispute between the parties in cases which fall under sub-sec. (2).... In other words, the contention is that the opening words of sub-section (2) postulates the existence of an admitted right vesting in a workman and do not cover cases where the said right is disputed.

On the other hand, the respondents contend that sub-section (2) is broad enough to take in all cases where a workman claims some benefit and wants the said benefit to be computed in terms of money.... On this argument all questions arising between the workmen and their employers in respect of the benefit which they claim to be computed in terms of money would fall within the scope of sub-sec. (2).

[The Court referred to the legislative history of the Act and held :]

The legislative history of the Act to which we have just referred clearly indicates that having provided broadly for the investigation and settlement of industrial disputes on the basis of collective bargaining, the legislature recognised that individual workman should be given a speedy remedy to enforce their existing individual rights and so, inserted S. 33 A in the Act in 1950 and added S. 33-C in 1956. These two provisions illustrate the cases in which individual workmen can enforce their rights without having to take recourse to S. 10 (1) of the Act or without having to depend upon their Union to espouse their cause. Therefore, in construing S. 33-C we have to bear in mind two relevant considerations. The construction should not be so broad as to bring within the scope of S. 33-C cases which would fall under S. 10 (1).... Similarly, having regard to the fact that the policy of the Legislature in enacting S. 33-C is to provide a speedy remedy to the individual workmen to enforce or execute their existing rights, it would not be reasonable to exclude from the scope of this section cases of existing rights which are sought to be implemented by individual workmen. In other words, though in determining the scope of S. 33-C we must take care not to exclude cases which legitimately fall within its purview, we must also bear in mind that cases which fall under S. 10 (1) of the Act for instance, cannot be brought within the scope of S. 33-C.... The claim under Section 33-C (2) clearly postulates that the determination of the question about computing the benefit in terms of money, may, in some cases, have to be preceded by an enquiry into the existence of the right and such an enquiry must be held to be incidental to the main determination which has been assigned to the Labour Court by sub-section (2)...

S. 33-C (2) takes within its purview cases of workman who claimed that the benefit to which they are entitled should be computed in terms of money, even though the right to the benefit on which their claim is based is disputed by their employers....

It is however, urged that in dealing with the question about the existence of a right set up by the workman, the Labour Court would necessarily have to interpret the award or settlement on which the right is based, and that cannot be within its jurisdiction under Sec. 33-C (2) because interpretation of awards or settlements has been specifically and expressly provided for by S. 36 A....

[T]he scope of S. 36 A is different from the scope of S. 33-C (2), because S. 36 A is not concerned with the implementation or execution of the award at all, whereas that is the sole purpose of S. 33-C (2). Whereas S. 33 C (2) deals with cases of

implementation of individual rights of workmen falling under its provisions, S. 36 A deals merely with a question of interpretation of the award where a dispute arises in that behalf between the workmen and the employer and the appropriate Government is satisfied that the dispute deserves to be resolved by reference under S. 36 A.

Besides, there can be no doubt than when the Labour Court is given the power to allow an individual workman to execute or implement his existing individual rights, it is virtually exercising execution powers in some cases, and it is well settled that it is open to the Executing Court to interpret the decree for the purpose of execution. It is, of course, true that the Executing Court cannot go behind the decree, nor can it add to or subtract from the provision of the decree. These limitations apply also to the Labour Court, but like the Executing Court, the Labour Court would also be competent to interpret the award or settlement on which a workman bases his claim under S. 33-C (2). Therefore, we feel no difficulty in holding that for the purpose of making the necessary determination under S. 33-C (2), it would, in appropriate cases, be open to the Labour Court to interpret the award or settlement on which the workman's right rests....

[I]n enacting S. 33-C the legislature has deliberately omitted some words which occurred in S. 20 (2) of the Industrial Disputes (Appellate Tribunal) Act. 1950. It is remarkable that similar words of limitation have been used in S. 33-C (1) because S. 33-C (1) deals with cases where any money is due under a settlement or an award or under the provisions of Chapter VA. It is thus clear that claims made under S. 33-C (1), by itself can be only claims referable to the settlement) award, or the relevant provisions of Chapter VA. These words of limitation are not to be found in S. 33-C (2) and to that extent, the scope of S. 33-C (2) is undoubtedly wider than that of S. 33-C (1)... There is no doubt that the three categories of claims mentioned in S. 33-C (1) fall under S. 33-C (2) and in that sense, S. 33-C (2) can itself be deemed to be a kind of execution on proceeding, but it is possible that claims not based on settlements, awards or made under the provisions of Chapter VA, may also be competent under S. 33-C (2) and that may illustrate its wider scope. We would, however, like to indicate some of the claims which would not fall under S. 33-C (2).... 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. 33-C (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. 33-C (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, to claim the benefit as though the said settlement had come to an end. If the settlement exists and continues to be operative, no claim can be made under S. 33-C (2) in

consistent 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 prescribed by the Act. . . . In this connection, we may incidentally state that the observations, made by this Court in the case of *Punjab National Bank Ltd.* ...(AIR 1963 SC 487) that S. 33-C is a provision in the nature of execution should not be interpreted to mean that the scope of S. 33 C (2) is exactly the same as S. 33 C (1). . . . (at pp. 489-90). . . .

We have had occasion in the past to emphasise the fact that industrial adjudication should not encourage unduly belated claims, but on the other hand, no limitation is prescribed for an application under S. 33 C (2) and it would, on the whole, not be right for us to refuse an opportunity to the respondents to prove their case only on the ground that they moved the Labour Court after considerable delay. . . .

[Appeals are allowed and cases remanded to the Labour Court for disposal in accordance with law].

FABRIL GASOSA v. LABOUR COMMISSIONER
(1997) 3 SCC 150

[For the facts of the case see Part V. Excerpts from the judgment of the Court on the nature and scope of execution proceedings under section 33C delivered by Anand J. follow:]

Section 33-C is in the nature of execution proceedings designed to recover the dues to the workmen. Vide Sections 33-C(1) and (2), the legislature has provided a speedy remedy to the workmen to have the benefits of a settlement or award which are due to them and are capable of being computed in terms of money, be recovered through the proceedings under those sub-sections. The distinction between sub-section (1) and sub-section (2) of Section 33-C lies mainly in the procedural aspect and not with any substantive rights of workmen as conferred by these two sub-sections. Sub-section (1) comes into play when on the application of a workman himself or any other person assigned by him in writing in this behalf or his assignee or heirs in case of his death, the appropriate Government is satisfied that the *amounts so claimed are due and payable* to that workman. On that satisfaction being arrived at, the Government can initiate action under this sub-section for recovery of the amount provided the amount is a determined one and requires no adjudication. The appropriate Government does not have the power to *determine* the amount *due* to any workman under sub-section (1) and that determination can only be done by the Labour Court under sub-section (2) or in a reference under Section 10(1) of the Act. Even after the determination is made by the Labour Court under sub-section (2) the amount so determined by the Labour court, can be recovered through the summary and speedy procedure provided by sub-section (1). Sub-section (1) does not control or affect the ambit and operation of sub-section (2) which is wider

in scope than sub-section (1). Besides the rights conferred under Section 33-C(2) exist in addition to any other mode of recovery which the workman has under the law. An analysis of the scheme of Sections 33-C(1) and 33-C(2) shows that the difference between the two sub-sections is quite obvious. While the former sub-section deals with cases where *money is due* to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or V-B, sub-section (2) deals with cases where a workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money. Thus, where the amount due to the workmen, flowing from the obligations under a settlement is predetermined and ascertained or can be arrived at by any arithmetical calculation or simpliciter verification and the only inquiry that is required to be made is whether it is *due* to the workmen or not, recourse to the summary proceedings under Section 33- C(1) of the Act is not only appropriate, but also desirable to prevent harassment to the workmen. Sub-section (1) of Section 33-C entitles the workmen to apply to the appropriate Government for issuance of a certificate of recovery for any money due to them under an award or a settlement or under the provisions of Chapter V-A and the Government, if satisfied, that a specific sum is due to the workmen, is obliged to issue a certificate for the recovery of the amount due. After the requisite certificate is issued by the Government to the Collector, the Collector is under a statutory duty to recover the amount due under the certificate issued to him. The procedure is aimed at providing a speedy, cheap and summary manner of recovery of the amount *due*, which the employer has wrongfully withheld. It therefore, follows that where money due is on the basis of some amount predetermined ... the rate of which stands determined 'in terms of the settlement, an award or under Chapter V-A or V-B, and the period for which the arrears are claimed is also known, the case would be covered by sub-section (1) as only a calculation of the amount is required to be made.

A Constitution Bench of this Court in *Kays Construction Co. (P) Ltd. U.P.*, AIR 1965 SC 1488 while considering the scope of Section 6-H(1) and (2) of the Industrial Disputes Act, 1947, which provisions are in *pari materia* with Section 33-C(1) and (2) opined:

"The contrast in the two sub-sections between 'money due' under the first sub-section and the necessity of reckoning the benefit in terms of money before the benefit becomes 'money due' under the second sub-section shows that mere arithmetical calculations of the amount due are not required to be dealt with under the elaborate procedure of the second sub-section. The appellant no doubt conjured up a number of obstructions in the way of this simple calculation. These objections dealt with the 'amount due' and they are being investigated because State Government must first satisfy itself that the amount claimed is in fact due, But the antithesis between 'money due' and a 'benefit which must be computed in terms of money' still remains, for the inquiry being made is not of the kind contemplated by the second sub-section but is one for the satisfaction of the State Government

under the first sub-section, it is verification of the claim .to money within the first sub-section and not determination in terms of money of the value of a benefit,"

The law laid down by the Constitution Bench applies with full force to the facts of the instant case and in view of the established facts and circumstances of this case, recourse to the proceedings under Section 33-C(1) of the Act by the Union was just and proper.

The Division Bench of the Bombay High Court was therefore, right in holding that the recovery certificates issued by the Labour Commissioner for recovery of the amounts claimed by the workmen in the proceedings under Section 33-C(I) of the Act were perfectly valid, legally sound and suffered from no infirmity whatsoever. We do not find any merit in these appeals and consequently dismiss the same with costs.

Before parting with the judgment, we would, however, like to clarify that the application which has been filed by the employees' union before the Labour Court under Section 33-C(2) of the Act' for recovery of benefits/amounts, other than those claimed in their application under Section 33-C(1) of the Act shall be decided by the Labour Court on its own merits and the findings recorded by us hereinabove shall be considered as confined only to the recovery certificates issued by the Labour Commissioner under Section 33-C(1) of the Act, which are the subject-matter of the appeals hereby disposed of by us.

AJAIB SINGH v. SIRHIND COOP. MARKETING-CUM-PROCESSING SERVICE SOCIETY LTD.
(1999) 6 SCC 82

[Sirhind Co-operative Marketing-Cum-Processing Service Society Ltd. (respondent) terminated the service of Ajaib Singh (appellant). Thereupon, the appellant raised an industrial dispute regarding termination of service on 18.12.1981. The appropriate government referred the dispute after one year to the labour court for adjudication. The labour court directed reinstatement with full back wages. Against this order the respondent filed a writ petition before the high court. Even though the management had not taken the plea of delay on the part of workman before the labour court, the high court held the workman was disentitled to any relief as he had slept over the matter for seven long years which might have rendered it difficult for the management to prove the guilt of the workman. Aggrieved by this order the appellant filed an appeal before the Supreme Court. Excerpts from the judgment of the Supreme Court delivered by Sethi J. follow:]

...It appears to us that the High Court has adopted a casual approach in deciding the matter apparently ignoring the purpose, aim and object of the Act.

This Court in *Bombay Gas Co. Ltd.* v. *Gopal Bhiva,* AIR 1964 SC 752 held that the provisions of Article 181 (now Article 137) of the Limitation Act apply only to

applications which were made under the Code of Civil Procedure and its extension to applications under Section 33-C(2) of the Act was not justified. This position was further reiterated and explained by this Court in *Town Municipal Council, Athani* v. *Presiding Officer, Labour Court* (1969) 1 SCC 873 (pp. 882-83, paras 11-12).

"This point, in our opinion, may be looked at from another angle also. When this Court earlier held that all the articles in the third division to the Schedule, including Article 181 of the Limitation Act of 1908, governed applications under the Code of Civil Procedure only, it clearly implied that the applications must be presented to a court governed by the Code of Civil Procedure. Even the applications under the Arbitration Act that were included within the third division by amendment of Articles 158 and 178 were to be presented to courts whose proceedings were governed by the Code of Civil Procedure. At best the further amendment now made enlarges the scope of the third division of the Schedule so as also to include some applications presented to courts governed by the Code of Criminal Procedure. One factor at least remains constant and that is that the applications must be to courts to be governed by the articles in this division. The scope of the various articles in this division cannot be held to have been so enlarged as to include within them applications to bodies other than courts, such as a quasi-judicial tribunal, or even an executive authority. An Industrial Tribunal or a Labour Court dealing with applications or references under the Act are not courts and they are in no way governed either by the Code of Civil Procedure or the Code of Criminal Procedure. We cannot, therefore, accept the submission made that this article will apply even to applications made to an Industrial Tribunal or a Labour Court. The alterations made in the article and in the new Act cannot, in our opinion, justify the interpretation that even applications presented to bodies, other than courts, are now to be governed for purposes of limitation by Article 137."

In *Sakuru* v. *Tanaji,* (1985) 3 SCC 590 it was held that the provisions of the Limitation Act applied only to proceedings in courts and not to appeals or applications before the bodies other than courts such as quasi—judicial tribunals or executive authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on courts under the Codes of Civil or Criminal Procedure. The view taken by this Court in *Municipal Council, Athani,* (1969) 1 SCC 873 and *Nityananda M. Joshi* v. *LIC of India,* (1969) 2 SCC 199 was reiterated with approval.

In *Jai Bhagwan* v. *Ambala Central Coop. Bank Ltd.,* (1969) SCC 873 this Court declined to set aside the order of reinstatement of the workman who was shown to have approached the Court after a prolonged delay. However, in the circumstances of the case, the Court directed the workman to be reinstated in service with continuity from the date on which his services were terminated but having regard to the fact that he had raised the industrial dispute after a considerable delay without doing anything in the meanwhile, he was not awarded the back wages. The grant of half

back wages from the date of termination of service until the date of order and full back wages from that date till his reinstatement was found in the circumstances to meet the ends of justice. In *H.M.T. Ltd.* v. *Labour Court,* (1994) 2 SCC 38 where there was a delay of 14 years in invoking the jurisdiction of the court, this Court found that instead of full back wages, the grant of 60 per cent of the back wages upon the reinstatement of the workman would meet the ends of justice.

It follows, therefore, that the provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The court may also in appropriate cases direct the payment of part of the back wages instead of full back wages. Reliance of the learned counsel for the respondent management on the Full Bench judgment of the Punjab and Haryana High Court in *Ram Chander Morya* v. *State of Haryana,* ILR (1999) 1 P&H 93 is also of no help to him. In that case the High Court nowhere held that the provisions of Article 137 of the Limitation Act were applicable in the proceedings under the Act. The Court specifically held "neither any limitation has been provided nor any guidelines to determine as to what shall be the period of limitation in such cases". However, it went on further to say that "reasonable time in the cases of labour for demand of reference or dispute by appropriate Government to labour tribunals will be five years after which the Government can refuse to make a reference on the ground of delay and laches if there is no explanation to the delay."

We are of the opinion that the Punjab and Haryana High Court was not justified in prescribing the limitation for getting the reference made on an application under Section 33-C of the Act to be adjudicated. It is not the function of the court to prescribe the limitation where the legislature in its wisdom had thought it fit not to prescribe any period. The courts admittedly interpret law and do not make laws. Personal views of the Judges presiding over the Court cannot be stretched to authorise them to interpret law in such a manner which would amount to legislation intentionally left over by the legislature. The judgment of the Full Bench of the Punjab and Haryana High Court has completely ignored the object of the Act and various pronouncements of this Court as noted hereinabove and thus is not a good law on the point of the applicability of the period of limitation for the purposes of invoking the jurisdiction of the courts/boards and tribunal under the Act.

In the instant case, the respondent management is not shown to have taken any plea regarding delay as is evident from the issues framed by the Labour Court.

The only plea raised in defence was that the Labour Court had no jurisdiction to adjudicate the reference and the termination of the services of the workman was justified. Had this plea been raised, the workman would have been in a position to show the circumstances preventing him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. The learned Judges of the High Court, therefore, were not justified in holding that the workman had not given any explanation as to why the demand notice had been issued after a long period. The findings of facts returned by the High Court in writ proceedings, even without pleadings were, therefore, unjustified. The High Court was also not justified in holding that the courts were bound to render an even-handed justice by keeping balance between the two different parties. Such an approach totally ignores the aims and object and the social object sought to be achieved by the Act. Even after noticing that "it is true that a fight between the workman and the management is not a just fight between equals", the Court was not justified to make them, equals while returning the findings, which if allowed to prevail would result in frustration of the purpose of the enactment. The workman appears to be justified in complaining that in the absence of any plea on behalf of the management and any evidence, regarding delay, he could not be deprived of the benefits under the Act merely on the technicalities of law. The High Court appears to have substituted its opinion for the opinion of the Labour Court which was not permissible in proceedings under Articles 226/227 of the Constitution.

We are, however, of the opinion that on account of the admitted delay, the Labour Court ought to have appropriately moulded the relief by denying the appellant workman some part of the back wages. In the circumstances, the appeal is allowed, the impugned judgment is set aside by upholding the award of the Labour Court with the modification that upon his reinstatement the appellant would be entitled to continuity of service, but wages to the extent of 60 per cent with effect from 8-12-1981 when he raised the demand for justice till the date of award of the Labour Court, *i.e.*, 16-4-1986 and full back wages thereafter till his reinstatement would be payable to him.

Question

Do you think that the workmen should be entitled to reinstatement and full or partial back wages where he did not raise any dispute for seven years? What will be effect of the decisions on pendency of cases before the labour court / tribunal?

STATE OF U.P. v. BRIJPAL SINGH
Supreme Court, 2005 LLR 1191

[The management terminated the services of the respondent who was appointed as seasonal clerk on temporary and *ad hoc* basis in the office of senior marketing Inspector on stopgap arrangement. Thereupon the respondent workman filed a writ

petition in the high court. The high court stayed the operation of the order of termination. After a gap of about six years the respondent filed an application under section 33 C for payment of salary and bonus. The Labour Court directed the appellant-management to make the payment. On a writ filed by the management against the order of the Labour Court, the high court dismissed the petition. Thereupon the management filed an appeal before the Supreme Court Excerpts from the judgment of the court delivered by Dr. A.R. Lakshmanan J. follow:]

In the background facts of this case, the following questions of law arise for considering by this Court:

1. Whether the High Court erred in allowing the order passed by the Labour Court filed by the respondent under Section 33C(2) of the Industrial Disputes Act?
2. Whether the pendency of the Writ Petition No. 15172 of 1987 filed by the respondent herein, same being not finally disposed of, the liability to pay, if any to the concerned workman under Section 33C(2) of the I.D. Act, does arise or not?
3. Whether the High Court gravely erred in allowing the salary and bonus to the respondent, although he has not attended the office of the appellant after the stay order passed by the High Court dated 28.10.1987?
4. Whether the Labour Court has jurisdiction to entertain and decide the undetermined claim?

It is well settled that the workman can proceed under Section 33C(2) only after the Tribunal has adjudicated on a complaint under Section 33A or on a reference under Section 10 that the order of discharge or dismissal was not justified and has set aside that order and reinstated the workman. This Court in the case of *Punjab Beverages Pvt. Ltd.* v. *Suresh Chand*, (1978) 2 SCC 144, held that a proceeding under section 33C(2) is a proceeding in the nature of execution proceeding in which the Labour Court calculates the amount of money due to a workman from the employer, or, if the workman is entitled to any benefit which is capable of being computed in terms of money, proceeds to compute the benefit in terms of money. Proceeding further, this Court held that the right to the money which is sought to be calculated or to the benefit which is sought to be computed must be an existing one, that is to say, *already adjudicated* upon or provided for and must arise in the course of and in relation to the relationship between the industrial workman, and his employer. This Court further held as follows:

"It is not competent to the Labour Court exercising jurisdiction under Section 33C(2) to arrogate to itself the functions of an industrial tribunal and entertain a claim which is not based on an existing right but which may appropriately be made the subject matter of an industrial dispute in a reference under Section 10 of the Act."

In the case of *Municipal Corporation of Delhi* v. *Ganesh Razak & Anr.*, (1995) 1 SCC 235, this Court held as under:

"12. The High Court has referred to some of these decisions but, missed the true import thereof. The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compare the benefit so adjudicated on that basis in exercise of its power under Section 33C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity required interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33C(2) like that of the Executing Court's power to interpret the decrees for the purpose of its execution.

13. In these matters, the claim of the respondent-workmen who were all daily-rated/casual workers, to be paid wages at the same rate as the regular workers, had not been earlier settled by adjudication or recognition by the employer without which the stage for computation of that benefit could not reach. The workmen's claim of doing the same kind of work and their entitlement to be paid wages at the same rate as the regular workmen on the principle of "equal pay for equal work" being disputed, without an adjudication of their dispute resulting in acceptance of their claim to this effect, there could be no occasion for computation of the benefit on that basis to attract Section 33C(2). The mere fact that some other workmen are alleged to have made a similar claim by filing writ petitions under Article 32 of the Constitution is indicative of the need for adjudication of the claim of entitlement to the benefit before computation of such a benefit could be sought. Respondents' claim is not based on a prior adjudication made in the writ petition filed by some other workmen upholding a similar claim, which could be relied on as an adjudication ensuring to the benefit of these respondents as well. The writ petitions by some other workmen to which some reference was casually made, particulars of which are not available in these matters, have, therefore, no relevance for the present purpose. It must, therefore, be held that the Labour Court as well as the High Court were in error in treating as maintainable the applications made under Section 33C(2) of the Act by these respondents"

In the case of *State Bank of India* v. *Ram Chandra Dubey* (2001) 1 SCC 73, this Court held as under:

When a reference is made to an industrial Tribunal to adjudicate the question not only as to whether the termination of a workman is justified or not but to grant appropriate relief, it would consist of examination of the question whether the reinstatement should be with full or partial back wages or none. Such a question is

one of fact depending upon the evidence to be produced before the Tribunal. If after the termination of the employment, the workman is gainfully employed elsewhere it is one of the factors to be considered in determining whether or not reinstatement should be with full back wages or with continuity of employment. Such questions can be appropriately examined only in a reference. When a reference is made under Section 10 of the Act, all incidental questions arising thereto can be determined by the Tribunal and in this particular case, a specific question has been referred to the Tribunal as to the nature of relief to be granted to the workmen.

The principles enunciated in the decisions referred by either side can be summed up as follows:

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 Act. The benefit sought to be enforced under Section 33C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages".

Thus it is clear from the principle enunciated in the above decisions that the appropriate forum where question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made. Thereafter, the Labour Court, in the instant case, cannot arrogate to itself the functions of an Industrial Tribunal and entertain the claim made by the respondent herein which is not based on an existing right but which may appropriately be made the subject matter of an industrial dispute in a reference under Section 10 of the I.D. Act.

Therefore, the Labour Court has no jurisdiction to adjudicate the claim made by the respondent herein under Section 33C(2) of the I.D. Act in an undetermined claim and until such adjudication is made by the appropriate forum, the respondent-workman cannot ask the Labour Court in an application under Section 33C(2) of the I.D. Act to disregard his dismissal as wrongful and on that basis to compute his wages. It is, therefore, impossible for us to accept the arguments of Mrs. Shymala Pappu that the respondent-workman can file application under Section 33C(2) for determination and payment of wages on the basis that he continues to be in service pursuant to the said order passed by the High Court in Writ Petition No. 15172 of 1987 dated 28.10.1987. The argument by the learned counsel for the workman has no force and is unacceptable. The Labour Court, in our opinion, has erred in allowing the application filed under Section 33C(2) of the I.D. Act and ordering payment of not only the salary but also bonus to the workman although he has not attended the office of the appellants after the stay order obtained by him. The Labour Court has committed a manifest error of law in passing the order in question, which was rightly impugned before the High Court and erroneously dismissed by the High Court. The High Court has also equally committed a manifest error in not considering the scope of Section 33C(2) of the I.D. Act. We, therefore, have no hesitation in setting aside the order passed by the Labour Court . . . and the order passed by the High Court . . . as illegal and uncalled for. We do so accordingly.

APSRTC & ANR. v. B.S. DAVID PAUL
Supreme Court, (2006) LLR 319

[The respondent-employee alleged that his services were illegally terminated by the Andhra Pradesh State Road Transport Corporation (appellant). He raised an industrial dispute, which was referred by the State Government to the Labour Court. Before the Tribunal the appellant-corporation took the stand that they were not its employees and, in fact, were employees of independent contractors. The Labour Court rejected the contention and held that the termination was bad and the concerned applicants were entitled for reinstatement. The appellant-corporation, therefore, reinstated the respondents. Subsequently, the respondents filed an application before the Labour Court stating that they were entitled to back wages for the period they were out of employment and they were entitled to be paid back wages in terms of section 33C(2) of the Act. The corporation resisted the claim on the ground that there was no direction for payment of back wages and, therefore, section 33C(2) had no application. . The labour court did not accept the stand and directed payment. The award was challenged before the high court, which dismissed the writ application. Against this order the appellant filed an appeal before the Supreme Court. Excerpts from the judgment of the court delivered by Arijit Pasayat J. follow:]

Learned counsel for the appellant submitted that when the only direction given by the Labour Court was reinstatement, there was no question of payment of any

back wages and in any event section 33C(2) had no application.

The principle of law on point is no more *res integra*. This Court in *AP SPTC* v. *S. Narsagoud*, 2003 (2) SCC 212 succinctly crystallised the principle .of law in Paragraph 9 of the judgment on Page 215:

"We find merit in the submission so made. There is a difference between an order of reinstatement accompanied by a simple direction for continuity of service and a direction where reinstatement is accompanied by a specific direction that the employee shall be entitled to all the consequential benefits, which necessarily flow from reinstatement or accompanied by a specific direction that the employee shall be entitled to the benefit of the increments earned during the period of absence. In our opinion, the employee after having been held guilty of unauthorised absence from duty cannot claim the benefit of increments notionally earned during the period of unauthorized absence in the absence of a specific direction in that regard and merely because he has been directed to be reinstated with the benefit of continuity in service."

The above position was reiterated in *A.P. State Road Transport Corporation* v. *Abdul Kareem*, 2005 (6) SCC 36 and in *Rajasthan State Road Transport Corporation* v. *Shyam Bihari Lal Gupta*, 2005 (7) SCC 406.

In the case of *State Bank of India* v. *Ram Chandra Dubey* (2001)1 SCC 73, this Court held as under:

"7. When a reference is made to an Industrial Tribunal to adjudicate the question not only as to whether the termination of a workman is justified or not but to grant appropriate relief, it would consist of examination of the question whether the reinstatement should be with full or partial back wages or none. Such a question is one of fact depending upon the evidence to be produced before the Tribunal. If after the termination of the employment, the workman is gainfully employed elsewhere it is one of the factors to be considered in determining whether or not reinstatement should be with full back wages or with continuity of employment. Such questions can be appropriately examined only in a reference. When a reference is made under section 10 of the Act, all incidental questions arising thereto can be determined by the Tribunal and in this particular case, a specific question has been referred to the Tribunal as to the nature of relief to be granted to the workmen."

The principles enunciated in the decisions referred by either side can be summed up as follows:

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 Act. The benefit sought to be enforced under section 33C(2) of the Act is necessarily a pro-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is

vital. The former falls within jurisdiction of Labour Court exercising powers under section 33C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages.

Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances, which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference under section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages."

The position was recently reiterated by three-judge Bench in *State of U.P* v. *Brijpal Singh*, 2005 (8) SCC 58.

The orders of the Labour Court as affirmed by the High Court are indefensible, deserve to be set aside, which we direct.

The appeals are allowed but without any order as to costs.

Appeal allowed.

UNION OF INDIA v. KANKUBEN (DEAD) BY LRS AND OTHERS
Supreme Court, 2006 LLR 494

[The respondent-workman filed an application before the labour court for recovery under section 33C(2) in respect of certain claims of overtime allowances on account of "on and off duty" for taking out and bringing in locomotives from the shed. The Labour Court allowed the claim. The Division Bench of Gujarat High Court upheld the award of the Labour Court by holding that the claim was maintainable. Thereupon the appellant Union of India filed an appeal by special leave before the Supreme Court. Excerpts from the judgment of the court delivered by Arijit Pasayat J. follow:]

In support of the appeals, learned counsel for the appellants submitted that the true scope and ambit of section 33C(2) of the Act has not been kept in view. Learned counsel for the respondents on the other hand submitted that in similar cases reliefs have been granted and the challenge thereto had been repelled by the High Court.

The respondents were similarly situated and, therefore, the appeals deserve to be dismissed. Reliance is placed on a decision of this Court in *Director General (Works), C.P.W.D.* v. *Ashok Kumar* 1999 (9) SCC 167, in support of the stand.

In the case of *State Bank of India* v. *Ram Chandra Dubey* (2001) 1 SCC 73, this Court held as under:

"7. When a reference is made to an Industrial Tribunal to adjudicate the question not only as to whether the termination of a workman is justified or not but to grant appropriate relief, it would consist of examination of the question whether the reinstatement should be with full or partial back wages or none. Such a question is one of fact depending upon the evidence to be produced before the Tribunal. If after the termination of the employment, the workman is gainfully employed elsewhere it is one of the factors to be considered in determining whether or not reinstatement should be with full back wages or with continuity of employment. Such questions can be appropriately examined only in a reference. When a reference is made under section 10 of the Act, all incidental questions arising thereto can be determined by the Tribunal and in this particular case, a specific question has been referred to the Tribunal as to the nature of relief to be granted to the workmen.

The principles enunciated in the decisions referred by either side can be summed up as follows:

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 Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under section 33C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to be reinstatement without stating anything more as to the back wages.

Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference under section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to

back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant to back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages".

The position was recently reiterated by three-judge Bench of this Court in *State of U.P.* v. *Brijpal Singh,* 2005 LLR 1191 (SC); 2005 (8) SCC 58. [Also see *AP SRTC* v. *B.S. David Paul,* 2006 (2) SCC 282: 2006 LLR 319 (SC)].

Director General (Works), C.P.W.D. (supra) is clearly distinguishable on facts, as in that case the employer had accepted its liability and that is why this Court did not interfere. The factual scenario is entirely different in the cases at hand. Right from the beginning the appellants have been questioning the maintainability of the petitions under section 33C(2) of the Act. In view of the settled position in law as delineated above, the appeals deserve to be allowed which we direct. In the peculiar circumstances of the case, if any amount has been paid to any of the respondents in compliance of the order of the Labour Court and/or the High Court the same shall not be recovered. Costs made easy.

[Appeal allowed]