

BEFORE THE CENTRAL GOVERNMENT LABOUR  
COURT NO.2, MUMBAI

PRESENT

**SHRIKANT K. DESHPANDE**  
Presiding Officer/Judge

**APPLICATION NO. LC -2/ 06 of 2014**

**PARTIES:-**

1. Vijay Shankar Patil.  
Since deceased through his  
legal heirs;
  - 1A) Priyanka Vijay Patil  
Age: 50yrs, Occupation: Nil.
  - 1B) Mukesh Vijay Patil  
Age: 25yrs, Occupation: Nil.
  - 1C) Yogesh Vijay Patil  
Age: 20yrs  
All residents of:  
Room No. 4, VJTI College,  
Kamgar Chawl, Matunga (East),  
Mumbai- 400 019.
  
2. Dilip S. Kotharkar  
Since deceased through his  
legal heirs;
  - 2A) Deepali Dilip Kotharkar  
Age: 50yrs, Occupation: Nil.
  - 2B) Harikesh Dilip Kotharkar  
Age: 24yrs, Occupation: Nil.  
All residents of:  
R/o C/o Ashok Tarkar,  
6/603, Shram Shaphily CTS.,  
Poisar, Kandivali (West),  
Mumbai- 67.

**:APPLICANTS**

**V/S.**

1. UCO Bank  
Through its Divisional Manager  
UCO Bank, Mafatlal Centre,  
IInd Floor, Nariman Point,



Mumbai- 21.

:OPP PARTY

**APPEARANCES:**FOR THE APPLICANTS : Mr. Naveen Rathod,  
AdvocateFOR THE OPP PARTY : Mrs. P. Shetty  
Advocate**Mumbai, dated the 29th August 2024.****JUDGMENT**

(Delivered on 29.08.2024)

This is an application under Section 33 (C) 2 of the Industrial Disputes Act 1947.

According to the applicants, in Reference No. 13 of 1999, the award has been passed on 16.09.1999 and this Court directed the opponent Bank to reinstate the deceased on their original post w.e.f. 29.05.1997 and pay full back wages with all consequential benefits. The said award was challenged by the opponent in WP No. 4510 of 2000 before the High Court and after hearing both the sides the High Court vide order dated 30.08.2000 was pleased to reject the Writ Petition and confirmed the award. Thereafter the opponent also filed LPA 37/2013 before the High Court and the same was also rejected vide order dated 10.06.2014. As per award the opponent is liable to pay the amount of Rs. 8,58,825/- alongwith



Simple Interest @ of 9% since 29.05.1997 till its realization. The applicants added that, the opponent issued various circular during 1997 to 2010 in which daily wage rate for casual workers for higher CCA area has been specified as per the award the opponent is liable to pay the amount of Rs. 8,58,825/-. Thus the applicants pray for direction to the opponent to pay the amount alongwith Interest @ of 9% with equitable reliefs.

2. The opponent resisted the application by reply Ex-12 and thereby deny all the contentions of the applicants in totality. The opponent contended that, Labour Court has no jurisdiction to first decide entitlement and compute the benefits. It is only when the entitlement has been earlier adjudicated or recognised by the Tribunal or Court. The power of the Court under Section 33 (C) 2 of the Industrial Disputes Act extended to the interpretation of Award or settlement on which workman's right vests as such the application is not tenable under Law.

In the alternative, the opponent further contended that, the applicants were directed to be reinstated to their original post w.e.f. 29.05.1997 with full back wages on the date of their termination in May 1997, they were working as coolies on daily wages of Rs.40/- per day, they were not paid on Sundays and

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public holidays and paid on monthly basis, as such they were entitled for Rs. 40/- per day. The opponent also contended that, by letter dated 06.01.2015 they were called upon Demand Draft dated 23.12.2014 for Rs.1,99,280/- and report to office for instructions regarding joining, the applicant Vijay Patil has not reported for duty till date and D.S. Kotharkar reported for duty as daily wages in July 2010, continued in service till August 2015 his daily wages was Rs. 238/- per day and thereafter he abandoned the service. Lastly the opponent urged that, the application filed by the deceased applicant is frivolous and ultimately prayed for rejection of the application.

3. The following points arise for my determination. My findings and reasons to them are as below-

Sr. No.	Points	Findings
1.	Whether the application is tenable under Law?	Yes.
2.	Whether the deceased of the applicants are entitled for the amount as claimed?	Yes.

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3.	What order and costs?	As per order.
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### POINTS

4. Point No. 1- Mrs. Shetty Learned counsel appearing on behalf of the opponent strongly objected the maintainability of the application on the ground that, the proceeding under Section 33 (C) 2 of the Industrial Disputes Act 1947 are in the nature of execution proceeding and this Court can compute the amount of money due to the workmen. The computation follows upon existing right to money or benefits, which is previously adjudicated and this Court cannot adjudicate the claim in proceeding under Section 33 (C) 2 of the Industrial Disputes Act. In the case in hand, the claim in the application needs adjudication without that, the computation is not possible and as the same is not permissible also thus, the present application is not tenable under Law. She put her reliance on the various decisions between **State Bank of India & Ram Chandra Dubey and Ors. 2000 II LLJ Page 1660, Municipal Corporation of Delhi V/s. Ganesh Razak and Anr. 1995 1CLR 171 (Supreme**

SPD

**Court), M/s. Bombay Chemical Industry V/s. Dy. Labour Commissioner and Anr. in Civil Appeal No. 8613 of 2022.**

5. Undisputedly the applicants are seeking the implementation of award dated 16.09.1999 passed by this Court, which was confirmed by the High Court in letters patent appeal also. As per award this Court directed the opponent to reinstate the deceased applicants on their original post w.e.f. 29.05.1997 and pay full back wages with all consequential benefits. In short, the direction was to reinstate the deceased applicants with full back wages alongwith all consequential benefits. It means allow the deceased applicants to join on duty, pay full back wages as if they were not dismissed from service and to give all benefits to which the deceased applicants were entitled if not dismissed from service. In such circumstances, it will be unsafe to say that, for computation of amount in the light of award requires any adjudication.

6. I have carefully gone through the various decisions relied on behalf of the opponent. In **State Bank of India**, the employee filed an application u/s. 33 (C) 2 of ID Act for back wages as per award however there was specific order of reinstatement but not about back wages, in which it was appreciated that, for

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determination of claim for back wages, all relevant circumstances had to be gone in judicious manner that can be decided only in proceedings u/s. 10-A of the ID Act.

In **Municipal Corporation Delhi**, the matter before Hon'ble Lordship was of daily rated/ casual workers claimed that, they are doing same kind of work like regular employee, as such claimed same wages of regular employees therefore they filed an application u/s. 33 (C) 2 of the ID Act for computation of arrears of their wages, in which it has been held that, where the very basic claim of entitlement of workmen in certain benefits is disputed, there being no adjudication, the dispute relating to entitlement is not incidental therefore outside the scope of Sec. 33 (C) 2 of the ID Act.

In **M/s. Bombay Chemicals Industries**, the relationship of employer and employees was disputed therefore the Hon'ble Lordship appreciated that, it was not open for the Labour Court to entertain disputed question and adjudicate upon relationship u/s. 33 (C) 2 of the ID Act.

7. There cannot be any quarrel about the ratio laid down in the above referred dispute, however the facts of the matter

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before me are distinguishable than, the facts before Hon'ble Lordship, therefore I do not think that, those decisions are any way helpful to the opponent to established before the Court that, the present Reference is not tenable under Law.

8. It will not be out of place to mention here that, these applicants approached to the High Court in WP No. 8402 of 2012, in which the Hon'ble Lordships vide order dated 10.06.2014 opined that, the Writ Petition is not appropriate remedy to enforce award that may be made by Central Government Industrial Tribunal, there are provisions under Industrial Dispute Act, 1947 for purpose of effective enforcement and while refusing to entertain the Writ Petition, it was made clear that, the petitioner shall be at liberty to initiate proceeding under the provisions of Industrial Dispute Act, 1947 or any other applicable Law for the purpose of enforcement of award dated 16.09.1999. To my mind this direction was certainly no to raise Industrial Dispute and adjudicate the same.

9. In my opinion also in application u/s. 33 (C) 2 of the Industrial Dispute Act 1947, the Court can make computation of amount only, which is already adjudicated as adjudication is not permissible in an application u/s. 33 (C) 2 of the Industrial

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Dispute Act. In the case in hand, the amount is already adjudicated in award passed by this Court and the only computation of amount is necessary. Similarly the High Court also directed the Parties to initiate appropriate proceedings for enforcement of award dated 16.09.1999, in such circumstances the present application is certainly tenable under Law, Hence I answer this point in the Affirmative.

10. **Point No. 2-** In support of their claim, the Legal heirs of deceased Vijay Shankar Patil and the deceased of the applicant no. 2 Dilip Kotharkar deposed on behalf of the applicants whereas the opponent has examined Mohan Maruti Shinde Sr. Manager of the Bank and subjected him for cross examination before the Court.

It has come on record and not much disputed that, in Reference CGIT-2/13 of 1999, this Court passed an award on 16.09.1999 and thereby this Court directed the opponent Bank to reinstate the deceased applicants on their original posts w.e.f. 29.05.1997 and pay full back wages with all consequential benefits. The opponent challenged the said award before the High Court in WP No. 4510 of 2000 and also in LPA No. 37 of 2013 and both the petitioners were



rejected and the High Court was pleased to confirm the award passed by this Court.

11. It has further come on record that, during pendency of the proceeding, the applicant no. 1 Vijay Shankar Patil expired on 18.07.2016. The applicant no. 2 deposed before the Court that, as per circular daily wage employee was getting Rs. 104/- per day at the time of termination i.e., 1997 and as per circular dated 20.04.1999, the rate was increased and fixed for Rs. 114/- per day and in February 2007 it was fixed at Rs. 238/- per day. He further deposed that, during August 2010 to August 2015 he was given work on daily wages @ of Rs. 238/- per day and worked with the opponent.

In cross examination the opponent no. 2 admitted that, since 1995, he was getting Rs. 40/- per day, he worked at Ghansoli till 2010, in 2010 he was working as a watchman in Kandivali and getting Rs. 7,000/- per month after 2010. It is clear from the above evidence that, the deceased applicant no. 1 was entitled for back wages since 29.05.1997 to 18.07.2016, whereas the deceased applicant no. 2 is entitled for back wages

8/10

from 29.05.1997 to August 2010 as he worked with the opponent after August 2010.

12. The opponent examined Mohan Maruti Shinde Sr. Manager of the Bank, he deposed before the Court that, deceased applicants were working as Coolie cum Cleaner and they were entitled to claim wages of daily wage casual workers/ casual sweepers. Both were working as Coolies from 13.10.1986 and 05.05.1985 respectively and they will be regularized. Initially they were getting Rs. 15/- per day, in the last revision in February 1995 there wages were increased upto Rs. 40/- per day. He further deposed that, the applicant no. 2 worked as sweeper in 2010 and he was getting Rs. 7000/- per month.

In cross examination, the witness of the opponent fairly admitted that, circular Ex-38 (collectively) are the circulars of the Bank and CCA mentioned in the circular Ex-38 means Metro Cities like Mumbai, Delhi & Calcutta. The rate of empanelled casual workers was Rs. 104/- per day the wages of the employees were raised from time to time. Both the applicants were described as casual workers, both were recommended for empanelment. The witness also admitted that, the voucher of 1997 was not produced before the Court and the applicant





no. 2 getting Rs. 238/- per day. It is also come on record that, after award the applicants were not called to join their duties in compliance of that award.

13. It will not be out of place to mention here that, initially the applicants made claim for Rs. 27,55,500/-, however during proceeding the applicants by way of amendment restricted their claim to Rs. 8,58,825/- only, the same is based on circulars issued from January 1998 to 10<sup>th</sup> March 2010. It has come on record that, before termination i.e., 1997, the deceased employees were getting Rs. 40/- per day however in the light of these circulars referred above it can be safely inferred that, the rates of causal workers/coolies and sweepers were increased. This fact is corroborated by the witness of the opponent Bank during cross examination. The witness also deposed before the Court that, after passing the award, the applicants were not called to join on duty in compliance of that award nor called for payment of back wages.

Not only this but, the opponent failed to produce before the Court above the details of such claim of the deceased applicants in the light of various circulars which were issued since 1998 in rebuttal and in such circumstances the



amount claimed by the applicant cannot be discarded out rightly therefore the Legal heirs of the deceased applicant no. 1 are entitled for Rs. 8,58,825/-.

As the deceased applicant no. 2 worked with the opponent during August 2010 to August 2015 and as he was in gainful employment, the Legal heirs of the deceased applicant no. 2 are entitled for back wages till August 2010 as thereafter he was getting wages from the opponent after 2010, as such the Legal heirs of the deceased applicant no. 2 are entitled for amount of Rs. 5,53,162/- as claimed.

As regards the Interest, it is contended on behalf of the opponent that, the deceased applicants are not entitled for Interest. In my opinion also Tribunal cannot create a new right of parties beyond the award. In the decision of **A.F.R. Neutral Citation No.20/24** relied by the opponent, it has been held that, the Labour Court completely mislead in granting Interest as it was beyond the competence and scheme of Sec. 33 (C) 2 of ID Act therefore the heirs of the deceased applicants are not entitled for Interest from the date of award as claimed. In short, the Legal heirs of the deceased applicants are entitled

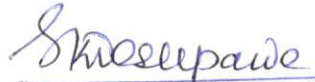
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for the amount of Rs. 8,58,825/- & Rs. 5,53,162/- respectively, hence, I answer this point in the affirmative.

**ORDER**

1. The application is allowed.
2. The opponent is directed to pay Rs. 8,58,825/- to the Legal heirs of the deceased applicant no. 1 & Rs. 5,53,162/- to the Legal heirs of deceased applicant no. 2 within a period of two months from the date of this order, failing which the said amount carry Interest @ of 6% from the date of this order till its realization.
3. The parties to bear their own costs.

Date: 29-08-2024

  
(Shrikant K. Deshpande)  
Presiding Officer  
CGIT -2, Mumbai