

**BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL – CUM –
LABOUR COURT-II, NEW DELHI**

LCA No. 04/2019

Sh. Omprakash Singh, S/o Sh. Gopal Singh,
R/o- Village- Jainpur, PO- Malagarh, District-Bulandshahar,
Uttar Pradesh-203001.

VERSUS

The Branch Manager,
State Bank of India,
Gulaothi Branch, Saidpur Road, District-Bulandshahar,
Uttar Pradesh-203408.

Present: Sh. Manmohan Singh, Ld. AR for the claimant.
Sh. Nirmal Mishra, Ld. AR along with Bank Manager for the
management.

AWARD

1. This order shall dispose off an application filed by the management for dismissal of the case on the ground of being not maintainable **under section 33(C)(2) of the Industrial Disputes Act (here in after is referred as an “Act”)**.

2. It is management stand that application filed by the workman U/s 33(C)(2) of the Act, praying to recover the sum of Rs. 1,25,691/- from the State Bank of India along with 18% interest in respect of the duties discharged in the interest of the bank is not maintainable. He submitted that the workman was not eligible for the allowances regularly claimed by him which included career progression allowance as per his cadre and duty assigned to him and officiating allowance in lieu of this charge. Workman deliberately misled the branch manager regarding his monetary

benefits. When this fact has been surfaced by the internal auditor in the internal audit report regarding wrongful payment of Rs. 1, 25,691/- which was recovered on two occasion by the bank i.e. Rs. 93,591/- on 13.11.2013 and Rs. 32,100/- on 14.05.2014. He submitted that claimant has filed application U/s 33(C)(2) of the I.D Act which is not maintainable, because, there is no admission on the part of the bank that claimant is not entitled to that amount.

3. Reply has not been filed, however, argument has been heard on behalf of both the parties.

4. Before proceeding further, claimant's case is required to be reproduced herein:

Claimant's case

*(i) Claimant has stated that, being a Special Assistant (Capability Level-4) with the respondent. He had worked on higher transaction capability level-5 from 2011 to 2013 in the interest of the bank to meet the bank's requirement. He had been paid the difference of amount on pro rata basis @ Rs. 145/-, which was paid manually with the concurrence and duty authorization by the **Branch Manager, State Bank of India, Gulaothi branch, Saidpur Road, Distt.- Bulandshahr, U.P- 203408**. Respondent, on the pretext of the Branch Audit, had deducted illegally the said amount i.e. 93,591/- on 13.11.2013 as well as 32,100/- on 14.05.2014. He submitted that the said amount be returned to him.*

(ii) Management had already taken the stand in the W.S as well as in their application, stating that provision of section 33(C) (2) is not applicable in the present case.

5. Before proceeding further, language of section 33(C) (2) of the I.D Act is required to reproduced herein:

Section 33(C)(2):

Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate government [within a period not exceeding three months:]

[Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.]

6. Counsel of the respondent had relied upon the judgment of **Bombay Chemical Industries vs. Deputy Labour Commissioner, CA No. 813/2022**, passed by the Hon'ble Supreme Court of India on 04.02.2022, wherein it was held that the labour court's jurisdiction under section 33(C) (2) of the I.D Act is like that of an executing court. As per the settled preposition of law without prior adjudication or recognition of the disputed claim of the workmen, proceedings for computation of the arrears of wages and/or difference of wages claimed by the workmen shall not be maintainable under section 33(C) (2) of the I.D Act. He further

submitted that, same view has also been expressed in the judgment of **Municipal Corporation of Delhi vs. Ganesh Razak and Anr. (1995) 1 SCC 235).**

7. On the other hand, workman has relied upon the judgment of **State of Punjab & Ors. vs. Rafiq Masih (white Washer) etc. in CA No. 11527 of 2014 (Arising out of SLP(C) No. 11684 of 2012)** passed by the Hon'ble Supreme Court of India on 18.12.2014, wherein certain circumstances have been enumerated, where the recovery of the excess payment have been prohibited.

8. The whole case of the workman stand on the plea that, certain amount i.e. Rs. 1,25,691/- has been deducted illegally by the bank in pursuance of the audit objection raised and he want to take back that money as he is entitled. He submitted that, certain circumstances have been enumerated by the Hon'ble Supreme Court of India in its Judgment **State of Punjab & Ors. vs. Rafiq Masih (white Washer) etc. in CA No. 11527 of 2014 (Arising out of SLP(C) No. 11684 of 2012)**, where the recovery has been prohibited.

9. Herein, the application has been filed by the claimant U/s 33(C)(2) of the I.D Act. The application U/s 33(C) (2) has been moved only, when it has been established on record that claimant is entitle to receive from the employer any money or any benefit, which is capable of being computed in reference to an award or settlement.

10. Here, in the present case, neither the award has been passed nor settlement took place between the claimant and the respondent. Respondent has already stated that amount have been deducted because he has been wrongly paid. So, the claimant's application U/s 33(C)(2) cannot be entertained because the respondent has not admitted the entitlement of the workman in the present case.

11. In view of the above discussion, application of the management for dismissal of the application stands allowed. Consequent thereto, application U/s 33(C) (2) filed by the claimant for entitlement of his amount of Rs. 1, 25,691/- stands dismissed.

Date: 24.06.2025

ATUL KUMAR GARG
Presiding Officer
CGIT-cum-Labour Court-II