

LCA 2266/2019

03/06/2022

Present:- Shri Rajiv Agarwal, Ld. A/R for the claimant.  
Ms. Rajni, Ld. A/R for the management.

The record is put up today for orders on the maintainability of the present proceeding before this tribunal as raised by the management NDMC. There are several matters pending before this tribunal of similar nature and thus, all are taken up for disposal by this common order.

The applicants of this proceeding are the workman who have filed applications u/s 33C(2) of the ID Act for computation of the benefits payable to them by their employer i.e NDMC. The respondent NDMC filed objection disputing jurisdiction of this tribunal on the grounds:

- (1) Labour Court doesn't have jurisdiction to entertain the present matter against the municipal corporation of Delhi in view of the notification no. 13030/07/2008 dated 01<sup>st</sup> December 2008 issued by government of India according to which the MCD is covered under the jurisdiction of Central Administrative Tribunal.
- (2) The claim is not maintainable in absence of compliance of mandatory provision under CCS/CCA/FRSR Rules.
- (3) The claim of the workman is neither verified nor properly signed by the claimant.
- (4) Though it has been stated in the petitions that demand notice was served on the management no document in proof of the same has been filed.
- (5) No document establishing the identity of the applicant filed.
- (6) That in view of the judgment of the apex court in the case of **MCD vs. Ganesh Razak and others 1994 (7)SCC476** wherein it has been held that the Labour Court or Tribunal has no power to determine the entitlement of the applicant if there is no prior adjudication or recognition of the same by the employer.

The argument was hearing being argued by the Penal counsel of NDMC. The circulars and notifications referred to in the application were produced for perusal during the hearing. The Ld. A/R Mr. Agarwal for the claimant workman disputed the stand taken by the management.

The scope and ambit of section 33C(2) of the Id Act has been discussed in the case of **Jeet Lal Sharma vs. Presiding Officer Labour court iv and another 2000IV AD(Del)** wherein the Hon'ble High Court after referring to the judgment of the Hon'ble Apex Court

in the case of PNB vs. K L Kharbhanda came to hold that when the claim is based on adjudication or settlement it possess 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 agreement between the employer and the employee. In such cases the jurisdiction of labour court will not be barred for computing the claim.

With regard to the notification dated 01.12.2008 referred in the previous paragraph it may be stated that the scope of section 28 of the administrative tribunal act has undergone interpretations by different courts at different stages and it is now a settled position that the labour courts exercise jurisdiction in respect of the dispute of the workman raised u/s 33C(2) of the Id Act. So far as the other objection with regard to the identity of the applicant, verification of the application etc are concerned those cannot be taken into consideration for deciding the maintainability of the proceeding. It is always open for the respondent to dispute the same during adjudication of the application.

Thus, the objection raised by NDMC with regard to maintainability is held devoid of merit and rejected. Call on 19/07/2022 for further proceeding.

Presiding Officer  
03/06/2022