

**Om Pati Vs. Dtc**

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**SooperKanoon Citation :** [sooperkanoon.com/848674](http://sooperkanoon.com/848674)

**Court :** Delhi

**Decided On :** Apr-23-2010

**Judge :** Manmohan Singh, J.

**Acts :** [Industrial Disputes Act, 1947](#) - Section 33(2), 33C(1) and 33C(2); ;  
[Constitution of India](#) - Article 226; ;Code of Civil Procedure (CPC)

**Appeal No. :** WP (C) No. 8508/2008

**Appellant :** Om Pati

**Respondent :** Dtc

**Advocate for Def. :** Avnish Ahlawat, Adv.

**Advocate for Pet/Ap. :** Rashmi B. Singh, Adv.

**Judgement :**

**Manmohan Singh, J.**

1. In the present petition under Article 226 of the [Constitution of India](#) the petitioner has challenged the order of the Labour Court dated 14.5.2004 and 7.11.2006 under Section 33C(2) of the [Industrial Disputes Act, 1947](#). In the impugned order, the Labour Court by an order dated 14.5.2004 directed the respondent to make the payment of the back wages due to the workman on the basis of last drawn salary from the date of his termination till the date of superannuation of 15.4.1994.

2. As the workman Dharampal died subsequently on 24.1.2000, the case was pursued by his wife Smt. Om Pati thus, as per order, the respondent was directed to make the payment to Smt. Om Pati widow of the deceased who has filed the present petition. The case of the petitioner is that late Dharampal was an employee with the respondent Delhi Transport Corporation from 1.10.1958. His services were terminated on 4.10.1971.

3. The husband of the petitioner was chargesheeted and pursuant to the charges, a domestic inquiry was conducted and the Inquiry Officer had found the husband of the petitioner guilty of charges levelled against him and therefore, he was removed from the service on 4.10.1971. The Industrial Dispute No. 165/1968 was pending under Section 33(2)(b) of the [Industrial Disputes Act, 1947](#) wherein the application was filed by the respondent on 4.10.1971 for seeking approval of action of removing the workman from the services of the respondent. On 6.4.1994 the approval application of the respondent was dismissed on the ground that the respondent had failed to establish the charges levelled against the workman.

4. The case of the petitioner is that by dismissal of the said application and by refusal of approval of the action the husband of the petitioner was deemed to be in service of the respondent and he was entitled for reinstatement with full wages as well as other consequential benefits. The workman moved the application on 15.7.1994 to join the duty and also for payment of his legal dues as he was not allowed to join the duty. Neither the respondent paid back wages nor the respondent challenged the order dated 6.4.1994.

5. Later on in November 1994, the workman filed an application under Section 33C(2) of the Industrial Disputes Act for computation of his back wages and other benefits. The said application was opposed by the respondent on the ground that the same was not maintainable. The matter was delayed due to one reason or other and, during this period workman expired on 24.1.2000. Sh. Brijesh Sethi, Presiding Officer, Labour Court VII, Karkardooma Court, Delhi, by order dated 20.5.2002 decided the issue of maintainability in favour of workman. In the main petition on 11.09.2002 the following issue was framed:

(i) To what amount, if any, the workman is entitled.

6. The case was fixed up for the evidence of the petitioner. The affidavit of the petitioner by way of evidence was filed on 22.10.2003. The respondent did not wish to cross-examine the petitioner and specific order in this respect was passed. On 14.5.2004 the impugned order was passed by Sh. C.K. Chaturvedi, Presiding Officer, Labour Court No. VII, directing the respondent to make the payment of back wages due to the workman on the basis of last drawn salary from the date of his termination till the date of superannuation of 15.4.1994 to the wife of the workman.

7. The petitioner, the petitioner demanded the amount from the respondent by moving the application under Section 33C(1) of the Industrial Disputes Act for recovery of amount of Rs. 5,43,757/- as claimed in the application under Section 33C(2) of the [Industrial Disputes Act, 1947](#), on the other hand, the respondent offered the petitioner a sum of Rs. 53,269/- as the back wages of the deceased workman as per the calculation made on the basis of the last drawn wages @Rs.274/- per month in view of impugned order of the Labour Court.

8. The application was also made for modification of typographical error in the order dated 14.5.2004. In the meanwhile, the Presiding Officer had been transferred and another application was filed by the petitioner being M No. 1/2006. The same was disposed of by making the correction in the spelling of name of the petitioner and rest of the relief made in the application was declined.

9. The main contention of the respondent is that the respondent had offered Rs. 53,269/- to the petitioner as back wages of the deceased workman which had been calculated by the respondent on the basis of last drawn wages @Rs.274/- per month as per the order of the Labour Court. On the other hand, the contention of the petitioner is that the entitlement of the claimed amount in view of the application by the husband of the petitioner had not been disputed by the respondent and where the claim made by the workman is on the basis of his pre-existing right, the quantum of claim could not be modified by the learned Labour Court without any jurisdiction.

10. It is also argued by the learned Counsel for the petitioner that the petitioner's evidence by way of Smt. Ompati had gone unchallenged as no cross-examination

was done by the respondent and she attached the calculation chart with the said affidavit amount to Rs. 5,43,757/-which was marked as Ex.AW1/3 and therefore, the Labour Court was bound to grant the said amount demanded as per the chart.

11. The next contention of the petitioner is that once the approval application of the respondent had been dismissed by the court which attained finality, the husband of the petitioner was deemed to be in services of the respondent, thus the order of dismissal becomes ineffective from the date it was passed and thus he becomes entitled to wages from the date of dismissal to the date of disapproval of the application till the time the employee is reinstated in service. Therefore, the back wages cannot be calculated for the entire period from date of removal i.e. 4.10.1971 upto the date of superannuation dated 15.5.1994 as held by the Labour Court in the impugned order.

12. After hearing learned Counsel for the parties I am agreeable with the submission of the petitioner as the function of Labour Court under Section 33C(2) is to calculate the amount due to the workman from the date of his employment and the money value of his benefit due to the workman when he was entitled to any benefit which is capable to be computed in terms of money. It appears that the Labour Court has merely computed the money equivalent to such benefit. Under Section 33C(2) the Court cannot entrench upon the adjudication functions and embark upon the elaborate enquiry as to what should be the terms to give benefit as has been done in the present case.

13. It is the admitted position that the approval application filed by the respondent was dismissed in favour of the petitioner and therefore, he became entitled to back wages from the date of removal till the time he is reinstated in service. It is a matter of fact that he was not allowed to join service of the respondent. It is also a matter of fact that the order of dismissal of approval application had not been challenged by the respondent.

14. Important aspect of the matter is also that the evidence produced by the petitioner has gone unchallenged and along with the said evidence, the calculation chart was produced by the petitioner.

15. In the present case, the benefits had accrued to the late husband of the petitioner by virtue of dismissal of approval application on 6.4.1994. Therefore, the learned Labour Court has erred in not computing the exact amount and not modifying the same on the application filed by the petitioner for modification.

16. In case of *Bombay Gas Co. Limited v. Gopal Bhiva* : 1963 II LLJ 608 SC while referring to the Central Bank Case, the Supreme Court has stated that the proceedings contemplated by Section 33C(2) of the [Industrial Disputes Act, 1947](#) are analogous to execution proceedings and the court, like the executing court in the execution proceedings governed by the Code of Civil Procedure, would be competent to interpret the award on which the claim is based. In other words, the power of the executing court is only to implement the adjudication already made by a decree and not to adjudicate a disputed claim which requires adjudication for its enforcement in the form of decree.

17. Considering the overall circumstances of the matter, this Court is of the considered view that the Labour Court has erred in not computing the amount correctly and therefore, the present petition is allowed. Both the orders dated 14.5.2004 and 7.11.2006 are accordingly modified with the directions to the respondent to make the payment as per the calculation chart filed by late husband of the petitioner before the Labour Court. The respondent is directed to pay the petitioner the back wages with effect from 1.10.1970 to 15.5.1994 with all consequential benefits.

18. The writ petition is accordingly disposed of. The petitioner is also entitled for the cost of Rs. 5000/- from the respondent.