

(2005) 02 AHC CK 0256

Allahabad High Court

Case No: C.M.W.P. No. 36754 of 1999 with C.M.W.P. No's. 33126 of 2001 and C.M.W.P.
45992 of 2004

U.P. State Electricity
Board and Others

APPELLANT

Vs

Presiding Officer,
Labour Court II and
Another

RESPONDENT

Date of Decision: Feb. 3, 2005

Acts Referred:

- Uttar Pradesh Industrial Disputes Act, 1947 - Section 33C(2), 6(H), 6H(1)

Citation: (2005) 5 AWC 4585

Hon'ble Judges: Ashok Bhushan, J

Bench: Single Bench

Advocate: Ranjit Saxena, S.C, for the Appellant; K.P. Agarwal, B.Maryam, S.N. Dubey and
Shiv Nath Singh, S.C., for the Respondent

Final Decision: Allowed

Judgement

Ashok Bhushan, J.

Heard Sri Ranjeet Saxena, learned Counsel for the Petitioners and Sri K. P. Agarwal, senior advocate, assisted by Miss. Bushra Maryam, for the contesting workman.

2. Counter and rejoinder-affidavits have been exchanged in all the writ petitions, with the consent of the parties all the writ petitions were heard together and are being decided by this common judgment.

3. Writ Petition No. 36754 of 1999 (hereinafter referred to as the first writ petition) has been filed praying for quashing the order dated 28th July, 1999 passed by Presiding Officer, Labour Court-II in Misc. Case No. 5 of 1998 u/s 33C(2) of the Industrial Disputes Act, 1947 allowing the application of workman. Writ Petition No. 33126 of 2001 (hereinafter referred to as the second writ petition) has been filed by

the Petitioner praying for quashing the order dated 31st August 2001 passed by Deputy Labour Commissioner allowing the application of the workman filed u/s 6H (1) of U.P. Industrial Disputes Act, 1947 for recovery of an amount of Rs. 3,16,686 claimed to be wages for the period 1.9.1998 to 30.6.2001. Writ Petition No. 45992 of 2004 (hereinafter referred to as the third writ petition) has been filed praying for quashing the order dated 8th October 2004 passed by Deputy Labour Commissioner by which application of workman filed u/s 6H (1) of U.P. Industrial Disputes Act, 1947 praying for recovery of an amount of Rs. 2,89,488.00 claimed to be wages for the period 1st July 2001 to 31st August 2003 has been allowed.

4. Brief facts necessary for adjudicating the controversy, which has arisen between the parties in the above three writ petitions, are ; the workman, Sri Ram Ashrey Kushwaha (hereinafter referred to as Respondent), was engaged as apprentice by the Petitioner and was allowed to work as Apprentice General Clerk. The Respondent by order dated 3rd May, 1984 was directed to discharge the duties in place of one Shamim Ahmad, Daily Wage Clerk, from 2nd April, 1984 to 16th April, 1984 and thereafter he was asked to work on a leave vacancy of one Ram Singh Rathor, Daily Wage Clerk. The case of the Respondent was that work of stenographer and typist was taken from him. By order dated 21st January, 1985, the services of the Respondent were extended for a period of three months as Apprentice General Clerk but even in extended period work of stenographer and typist was taken from him. After end of services as Apprentice General Clerk, the work of stenographer was taken from the Respondent on leave vacancy of one Sharat Shukla, Stenographer. Sri Sharat Shukla died on 21st July, 1985 and after his death, vide order dated 28th August, 1985, the Respondent was engaged for a period of one year as Apprentice General Clerk but the work of stenographer was taken from him and even after expiry of the aforesaid period, the work of stenographer was taken. However, during the said period, for some period, the Respondent was paid at the rate of Rs. 230. On leave vacancy of one Mohd. Siddiqui, Driver, the Respondent was engaged as Motor Mazdoor from 5th April, 1989 to 4th June, 1989 but the work of stenographer was taken from him. Even after 4th June, 1989 the work of stenographer was taken from the Respondent. Again on leave of one Sobaran Singh, Petrol Man, the Respondent was engaged against post of Coolie in the pay scale of Rs. 900-1,190 but as earlier the work of stenographer was taken from him. On account of working of the Respondent as stenographer, application dated 14th March, 1989 was made by the Respondent that he should be regularised on the post of stenographer. A letter was also written by Chief Engineer (Hydroelectric) dated 17th August, 1989 for regularization. Subsequently, recommendation was made on 4th September, 1990 for regularisation. The Respondent was not paid the salary of stenographer nor he was regularised. He raised an industrial dispute by making Conciliation Application dated 3rd October, 1991 copy of which has been filed as Annexure-1 to the first writ petition. A reference was made by Government order dated 27th May, 1992. The reference

made was, "as to whether the action of employers in not giving the designation and pay scale of stenographer according to nature of work of its employee, Sri Ram Ashrey Kushwaha, is invalid and illegal and if yes the workman is entitled to what relief or compensation by which date and by which detail". Before the labour court, the employer refuted the claim of workman and contended that workman was never appointed as stenographer. The employer's case was that the Respondent was only engaged as apprentice under Apprentice Act, 1961 and was never appointed on any post. The engagement of the Respondent came to an end after completion of apprenticeship period. The Respondent apart from apprenticeship training was engaged from 5th April, 1989 to 6th June, 1989 (on the vacancy of Mohd. Siddiqui, Driver), from 5th April, 1990 to 4th June, 1990 (on the vacancy of Shanti Devi, Peon) and from 14th June, 1990 to 31st July, 1990 (on the vacancy of Sobaran Singh, Petrol Man). During the above leave vacancy, the Respondent worked for fixed period and in no year his working was 240 days. The appointing authority for the post of Stenographer is Electricity Service Commission. No post of stenographer is vacant and there being ban on fresh appointment, no fresh appointment has been made. Before the labour court, both the parties lead their evidences and the labour court gave its award on 1st October, 1997, which was published on 5th February, 1998, in favour of the Respondent that the Respondent is entitled for the designation of stenographer and the pay scale with effect from 21st July, 1985, the date of death of Sri Sharat Shukla. The labour court held that the employers on the pretext of apprentice have engaged the workman on several lower posts and took the work of stenographer. Against the medical leave of Sharat Shukla, Stenographer, the work of stenographer was taken from the Respondent and after the death of Sharat Shukla on 21st July, 1985, the work of stenographer was being taken from the Respondent. Copy of the award has been filed as Annexure-3 to the first writ petition. From the award of the labour court, it is clear that labour court has noted the case of the parties and has not found that the Respondent was appointed as stenographer at any point of time, however, the basis of the award is that although the Respondent was appointed even on lower posts, the work of stenographer was being taken from him. It has further been held that the Respondent also worked on the medical leave of Sharat Shukla, Stenographer and after his death on 21st July, 1985, the work of stenographer was taken. The labour court further noted the case of the employer that the Respondent is not working on any post after 31st July 1990. The employer's case was that after 31st July, 1990, the workman was not engaged by the employer. No specific finding has been given in the award. After the award of the labour court, a writ petition being Writ Petition No. 16625 of 1998 was filed by the employers challenging the award of the labour court. The writ petition was dismissed with certain observations by this Court on 19th May, 1999. The observations made by this Court while dismissing the writ petition have bearing on the controversy which shall be noted little later. In the said writ petition, an interim order was also passed by this Court. An application u/s 33C(2) of Industrial Disputes Act, 1947 was moved by the Respondent on 5th

October, 1998 on which Misc. Case No. 56 of 1998 was registered. In the application, the Respondent prayed for wages from 21st July, 1985 to 31st August, 1998 and amount of Rs. 5,57,054 was prayed to be computed and directed to be paid with interest at the rate of 18 per cent. The application also stated that employer having not complied the terms of interim order dated 2nd September, 1998 passed by this Court in writ petition, the interim order had automatically come to an end. An objection was filed to the application dated 5th October, 1998 by the employers, copy of which objection has been filed as Annexure-6 to the first writ petition. The writ petition was ultimately dismissed by this Court on 19th May, 1999. The employers filed copy of the judgment dated 19th May, 1999 vide application dated 31st May, 1999 before Presiding Officer, labour court praying that in view of the judgment of the High Court dated 19th May, 1999, the Respondent is only entitled for difference of wages of stenographer to the wages which he had already received and no other benefit is liable to be paid. By order dated 28th July, 1999, the application of the Respondent u/s 33C(2) of Industrial Disputes Act, 1947 was allowed, copy of which order has been filed as Annexure-9 to the first writ petition which is under challenge in the first writ petition. This Court granted an interim order on 31st August, 1999 staying the operation of the order dated 28th July, 1999.

5. An application u/s 6H (1) of U.P. Industrial Disputes Act, 1947 was filed by the Respondent before the Deputy Labour Commissioner praying for wages amounting to Rs. 3,16,686 for the period 1st September, 1998 to 30th June 2001 as stenographer. The said application was contested by the Petitioners. The Deputy Labour Commissioner vide its order dated 31st August 2001 issued recovery certificate for an amount of Rs. 3,16,686 which has been challenged in the second writ petition. No interim order could be passed in the second writ petition. It has been stated by counsel for the Petitioner that the said amount has been recovered and paid to the Respondent.

6. Another application u/s 6H (1) of U.P. Industrial Disputes Act, 1947 was filed by the Respondent claiming wages for the period 1st July 2001 to 31st August 2003 as stenographer amounting to Rs. 2,89,488. The application was objected by the employers. Detailed objections were filed by the employer taking various pleas, copy of which objection has been filed as Annexure-9 to the third writ petition. The Deputy Labour Commissioner issued recovery certificate dated 8th October 2004 for recovery of an amount of Rs. 2,89,488. This Court passed an interim order on 3rd November 2004 directing that amount shall not be paid to the Respondent till further orders.

7. Sri Ranjeet Saxena, learned Counsel for the Petitioners in above cases, challenging the orders impugned in the writ petitions, raised almost similar submissions. He submitted that award of the labour court dated 1st October, 1997 did not entitle the Respondent to claim wages of stenographer and at best he was entitled for the difference of wages that of stenographer and the amount already

paid against the period for which the Respondent had worked and was paid. The award dated 1st October, 1997 did not entitle the Respondent to claim wages of stenographer, the award did not direct payment of salary as stenographer to the Respondent. A writ petition was filed in this Court challenging the award in which the Respondent himself submitted that award was not for payment of wages as stenographer but was confined only to the difference of wages. Sri Saxena contended that this Court while dismissing Writ Petition No. 16626 of 1998 against the award dated 1st October, 1997 made observations to the effect that award did not entitle the Respondent to claim continuance on the post of stenographer and in view of the observation of this Court, the application filed u/s 33C(2) by the Respondent was liable to be rejected. The order allowing the application u/s 33C(2) of Industrial Disputes Act, 1947 is based on non-consideration of relevant objections and has totally ignored the observations made by this Court while dismissing Writ Petition No. 16626 of 1998 challenging the award dated 1st October, 1997. The Presiding Officer, labour court while allowing the application u/s 33C(3) of Industrial Disputes Act, 1947 has only given two reasons, i.e., the employers have accepted entitlement of an amount of Rs. 5,56,754 in their objection and the High Court in the final judgment did not find any error in the award dated 1st October, 1997, hence the workman is entitled for the amount in pursuance of the award. Sri Saxena submitted that the employer never accepted the claim of the Respondent in the objection and in the objection the figure of 5,56,754 was mentioned only to the effect that correct calculation come to the said amount even according to the claim of the Respondent. Challenging the subsequent recovery certificates issued by Deputy Labour Commissioner u/s 6H (1) of U.P. Industrial Disputes Act, 1947, it is submitted that the Deputy Labour Commissioner without considering the objections including the effect of the judgment of this Court has mechanically issued recovery certificate. Challenging the order dated 8th October 2004 it has been submitted that detailed objections were raised before the Deputy Labour Commissioner including the objection that the scope of award stood modified by the observations of this Court in the above judgment which has not been adverted to by the Deputy Labour Commissioner.

8. Sri K. P. Agarwal, senior advocate, appearing for the Respondent, refuting the submissions of Sri Saxena, contended that the Respondent was fully entitled to claim wages of stenographer in view of the award of the labour court dated 1st October, 1997. The writ petition against the award was dismissed by this Court and the award stood confirmed. Sri Agarwal contended that the award of the labour court in no way stood diluted by judgment of this Court and there is no error in the order of Presiding Officer, labour court allowing the application u/s 33C(2) of Industrial Disputes Act, 1947 and subsequent orders passed u/s 6H (1) of U.P. Industrial Disputes Act, 1947. Sri Agarwal contended that there is no finding in the award that workman was not working as stenographer. Sri Agarwal further submitted that there is no case of the employers that at any point of time the

Respondent was terminated and relationship of employer and employee having not been terminated, the Respondent is fully entitled to claim his wages. He submitted that the fact that employers did not take any work from the workman was not relevant for denying the wages. Reliance has been placed by Sri Agarwal on Central Bank of India Limited v. P. S. Rajagopalan and Ors. AIR 1964 SC 743. With regard to scope of Section 33C(2) of Industrial Disputes Act, 1947, Sri Agarwal relied on judgment of Apex Court in [Chief Mining Engineer East India Coal Co. Ltd. Vs. Rameswar and Others](#), Reliance has also been placed on [Bank of India Vs. T.S. Kelawala and Others](#), and [Shree Changdeo Sugar Mills and Another Vs. Union of India and Another](#),

9. I have considered the submissions raised by counsel for the parties and perused the record.

10. The main issue which has arisen between the parties, centers round the contents and extent of award dated 1st October, 1997 given by the labour court. Both the parties are at great variance with regard to true extent and import of the award dated 1st October, 1997. The Respondent had filed an application u/s 33C(2) of Industrial Disputes Act, 1947 claiming wages for the post of stenographer from 21st July, 1985 to 31st August, 1998. While deciding the application u/s 33C(2) of Industrial Disputes Act, 1947, the Presiding Officer, labour court has every jurisdiction to interpret the award.

11. The case as pleaded by the Respondent before the labour court in Adjudication Case No. 9 of 1995 has been noted above. From the case taken by the Respondent, it is clear that Respondent claimed appointment as Apprentice General Clerk with the Petitioners whereas the employers pleaded that the Respondent was engaged as apprentice to give training. The labour court has not accepted the case of the employer that the Respondent was an apprentice, hence that question cannot be permitted to be reopened. The labour court accepted the case of the Respondent that although he was given appointment on lower posts but work of stenographer was taken from him. The labour court gave award that Respondent shall be given the post and designation of stenographer. Against the award Writ Petition No. 16626 of 1998 was filed by the employers which writ petition was dismissed with certain observations by this Court vide its judgment dated 19th May, 1999. Learned Counsel for the Petitioner has placed much emphasis on the observations made by this Court and has submitted that the award has to be read in the light of the observations of this Court and its scope and extent shall be treated to have been confirmed as per the observations made by this Court whereas learned Counsel for the Respondent has submitted that writ petition having been dismissed, the award in no manner is affected by dismissal of the writ petition. As noted above, the basis of the award dated 1st September, 1998 was the finding of the labour court that the Respondent had been discharging the duties of stenographer although he was engaged on different posts of Clerk and Class-IV employee from time to time. The

labour court although noted the claim of regularisation of the Respondent on the post of stenographer but did not hold that workman is entitled for regularisation. The award was challenged in this Court and while examining the challenge of the award in Writ Petition No. 16626 of 1998, this Court noted the stand of the Respondent (workman). The dismissal of the writ petition was subject to observations made in the judgment. The observations made in the judgment of this Court are, thus, relevant for interpreting the scope and extent of the award of the labour court which was under challenge in the writ petition. This Court noted the contentions of the parties which are as follows:

"The contention of the Board, that Respondent No. 3 was appointed as apprentice, has not been believed by the labour court. Labour court has, however, not granted relief regarding regularisation.

Learned Counsel for Respondent No. 3 has fairly conceded that such a relief could not be granted by the labour court and that Respondent No. 3 is as well not making claim of regularisation."

12. From above stand of Respondent No. 3, it is clear that Respondent No. 3 did not claim regularisation on the post of stenographer and in the writ petition it was specifically stated that no claim for regularisation on the post of stenographer is being made by Respondent No. 3. Last few paragraphs of the judgment are relevant which are quoted below:

"Learned standing counsel representing Respondent No. 3 has accepted the position that the award relates only to the claim of difference of wages which Respondent No. 3 is entitled to and to no other issue.

I find force in the contention of the learned Counsel for Respondent No. 3 that Respondent No. 3 ought to have been paid wages, which are admissible to a regularly appointed and similarly situated Stenographer irrespective of the fact that Respondent No. 3 was not appointed on regular basis. The award passed by labour court to that extent does not suffer from any error apparent on the face of record and there is no ground to interfere with the same, Board does not contend that Respondent No. 3 worked in any other capacity except as Stenographer irrespective of the post shown against his name.

Learned Counsel for the Petitioners submitted that Respondent No. 3 is not working anywhere in the Board. The apprehension of the Petitioners seems to be misplaced inasmuch as award given by the labour court (Annexure-13) nowhere recorded a specific finding relating to the working of Respondent No. 3 at the time of giving the award nor it directed the Board to continue Respondent No. 3 if Respondent No. 3 is not working. The workman is not entitled under award, in any manner, to seek re-employment. In fact there is no grievance of Respondent No. 3 on this score.

In view of the above, there is no manifest error apparent on the face of record warranting interference with the impugned award dated 1.10.1997 (Annexure-13 to petition) passed by the labour court.

The writ petition is dismissed subject to above observations. There will be no order as to costs."

13. From above quoted paragraphs, it is clear that counsel for the workman has accepted the position that award relates only to the claim of difference of wages which the Respondent was entitled and to no other issue. Thus, according to the Respondent himself, the award for the designation and pay scale of stenographer was accepted by the labour court which entitled the workman to claim difference of wages of stenographer as to the less wages received by him. The award of the labour court in so far as it allowed the claim of the Respondent to get salary and designation of stenographer was confirmed by this Court but this Court in the above judgment has also noted that the award did not direct the Board to continue the Respondent, if the Respondent is not working. The observations of this Court, in the above judgment, as quoted above, thus make it clear that award did not entitle the Respondent to claim continuance on the post of stenographer or to claim wages of stenographer in case he was not working on the post. The question as to whether the workman was discharging the duties as stenographer was, thus, relevant and without adverting to the said fact, the claim of the Respondent for salary of stenographer u/s 33C(2) of Industrial Disputes Act, 1947 could not have been allowed.

14. In view of the stand taken by the Respondent before this Court in Writ Petition No. 16626 of 1998 and the observations of this Court made in the said judgment, it is clear that the award entitled the Respondent to claim salary of stenographer as against the working of the Respondent as stenographer after 21st July, 1985. The Respondent was clearly entitled for the wages of stenographer with effect from 21st July, 1985 till he continued to work as stenographer. The first writ petition challenges the order passed by Presiding Officer, Labour Court u/s 33C(2) of Industrial Disputes Act, 1947. The application of the Respondent was claiming wages from 21st July, 1985 to 31st August, 1998. The Presiding Officer, labour court in the impugned order dated 28th July, 1999 noted the case of both the parties in detail. However, the reason for allowing the application were contained in paragraph 14 of the judgment. In the order impugned in the first writ petition following reasons have been given by the Presiding Officer for allowing the application:

(i) The employers in their written statement have expressly accepted the claim of the workman for an amount of Rs. 5,56,754.

(ii) The Hon"ble High Court in its final judgment dated 19th May, 1999 did not find any error in the award dated 1st October, 1997 and dismissed the writ petition.

(iii) Since the employers have accepted the claim of Rs. 5,56,754 hence on the basis of admission of employers, the amount of Rs. 5,56,754 is computed.

15. From above, it is clear that basis of the order is dismissal of the writ petition by this Court and alleged acceptance of claim of workman. A copy of the application filed u/s 33C(2) of Industrial Disputes Act, 1947 has been annexed by the Respondent as Annexure-5 to the first writ petition. The application is dated 5th October, 1998. The written statement to the application of the Respondent was filed by the employers on 8th February, 1999 copy of which has been filed as Annexure-6 to the first writ petition. In paragraph 2 of the written statement, it has been stated by the employers that claim of Rs. 5,57,054 as mentioned in the application of the workman is not correct and the correct amount is Rs. 5,56,754. In paragraph 3 it was stated that against the award writ petition has been filed by the Petitioners which is pending consideration. In paragraph 5 of the written statement it was specifically stated that workman is not entitled for full wages from 21st July, 1985. In paragraph 7 it was further stated that claim is premature since the writ petition is pending in the High Court. Admittedly the writ petition was decided finally on 19th May, 1999 and immediately after 19th May, 1999, an application was filed by the employers on 31st May, 1999 copy of which has been filed as Annexure-8 to the writ petition, in which it was stated that writ petition has been decided on 19th May, 1999 and according to the judgment of the High Court the workman is entitled only to difference of wages of stenographer to the wages already received by the workman and no other benefit is payable to the workman. This was specifically stated in paragraph 3 of the application. From perusal of the written statement and the application dated 31st May, 1999, it is clear that it was specifically claimed that workman is only entitled for difference. Thus, in view of specific averments made in paragraph 3 of the application dated 31st May, 1999, it cannot be said that employers accepted the claim. The Presiding Officer, labour court erroneously held in paragraph 14 that the claim of workman for wages from 21st July, 1985 to 31st August, 1998 has been accepted. The very basis of the impugned order being unfounded, the same cannot be sustained. Furthermore, the Presiding Officer, labour court has also not adverted to the observations made by this Court in its final judgment dated 19th May, 1999 and has only noted the dismissal of the writ petition but lost sight of the fact that dismissal was with observations which was relevant for interpreting the award and knowing the extent and scope.

16. The judgment of Apex Court relied by Sri K. P. Agarwal in the Central Bank of India's case (supra) was with regard to scope of interpretation of Section 33C(2) of Industrial Disputes Act, 1947. It has been held in the said judgment by the Apex Court that labour court has jurisdiction to determine whether workman has right to receive benefit. Following was laid down in paragraph 18 of the said judgment:

18. Besides, there can be no doubt that 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 u/s 33C(2). Therefore, we feel no difficulty in holding that for the purpose of making the necessary determination u/s 33C(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."

17. The Apex Court in Chief Mining Engineer's case (supra) had occasion to consider the scope of Section 33C(2) of Industrial Disputes Act, 1947. The Apex Court in the said judgment noticed scope of Section 33C(2) in the light of earlier judgment of the Apex Court. In the same judgment it has been held by the Apex Court that right 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 an industrial workman and his employer.

18. The next judgment relied by Sri Agarwal is Bank of India's case (supra). The Apex Court in the said judgment laid down that whether the strike is legal or illegal, the workers are liable to lose wages for the period of strike. The Apex Court further held that even in cases where action is resorted to on a mass scale, some employees may not be a party to the action and may have genuinely desired to discharge their duties but could not do so for failure of the management to give the necessary assistance or protection or on account of other circumstances then the management will not be justified in deducting wages of such employees without holding an enquiry. The said case was on different facts and is of no assistance to the Respondent in the present case.

19. The last case relied by Sri Agarwal is Changdeo Sugar Mills" case (supra). This was a case as to whether the employers were liable to contribution towards provident fund when there was settlement between the company and the workers under which ad hoc payment was made towards settlement of dues. The Apex Court in the said case laid down that although contribution towards provident fund can only be on a basic wage but it is not necessary that the workman must actually be on duty or that the workman should actually have worked in order to attract the provisions of the Employees' Provident Fund Act. The said judgment also does not help the Petitioner in the present case, 20. In view of the above discussions and propositions laid down by the Apex Court, as noted above, the application of the Respondent u/s 33C(2) of Industrial Disputes Act, 1947 was fully maintainable for claiming salary of stenographer with effect from 21st July, 1985. The Respondent claimed the said wages on the basis of the award of the labour court dated 1st October, 1997. The Presiding Officer, labour court was within its jurisdiction to

compute the entitlement of the workman and pass necessary orders u/s 33C(3) of Industrial Disputes Act, 1947, but in the impugned order dated 28th July, 1999, as noted above, he does not advert to the relevant facts and circumstances which were required to be considered. The Presiding Officer based its judgment on the alleged admission of the employers of the claim of workman to the extent of Rs. 5,56,754 which was not there, as noted in detail above. The employers had not admitted the liability to pay amount of Rs. 5,56,754, rather after judgment of this Court dated 19th May, 1999 they have expressly pleaded that the workman is entitled only for difference of wages to one which has already been received by the workman and the pay scale of stenographer. The labour court ought to have adverted to the said plea and considered the application accordingly. The order dated 28th July, 1998 (Annexure-9 to the first writ petition), thus, cannot be sustained and is hereby quashed. The Presiding Officer, labour court shall consider the application of the workman afresh taking into consideration the objections raised by the employers as well as observations of this Court in its judgment dated 19th May, 1999 in Writ Petition No. 16626 of 1998.

21. In second and third writ petitions, orders passed by Deputy Labour Commissioner issuing recovery certificates for payment of wages of stenographer from 1st September, 1998 to 30th June 2001 (Rs. 3,16,688) and from 1st July 2001 to 31st August 2003 (Rs. 2,89,488) have been challenged. In view of the foregoing discussions, the orders of Deputy Labour Commissioner dated 31st August 2001 and 8th October 2004 can also not be sustained and are hereby quashed.

22. Learned Counsel for the Petitioners has submitted that there being no interim order in second writ petition (Writ Petition No. 33126 of 2001), amount of Rs. 3,16,686 has already been recovered and paid to the workman. The impugned order dated 31st August 2001 having been set aside, the Petitioner is not entitled to receive the said amount. However, in view of the fact that application filed u/s 33C(2) of Industrial Disputes Act, 1947 filed by the Respondent has been directed to be considered afresh, it is not necessary at this stage to pass any order for recovery of the said amount. In case the Respondent is found entitled for any amount to be computed by the Presiding Officer, labour court in the application u/s 33C(2) of Industrial Disputes Act, 1947, the amount already paid to the Respondent be adjusted and consequential order to safeguard the interest of both the parties be passed while deciding the application u/s 33C(2) of Industrial Disputes Act, 1947.

23. In result, all the three writ petitions are allowed to the extent indicated above.

24. Parties shall bear their own costs.