

**HIGH COURT OF GUJARAT**

**BANK OF INDIA**

*Versus*

**GOPALBHAI VITHHALBHAI KHATRI HEIRS OF DECD V G KHATRI**

**Date of Decision:** 21 June 2012

**Citation:** 2012 LawSuit(Guj) 385

**Hon'ble Judges:** [S R Brahmbhatt](#)

**Case Type:** Special Civil Application

**Case No:** 3578 of 2003

**Subject:** Constitution, Labour and Industrial

**Acts Referred:**

[Constitution Of India Art 227, Art 226](#)  
[Industrial Disputes Act, 1947 Sec 33C\(2\)](#)

**Final Decision:** Petition allowed

**Advocates:** [Hemalk Acharya](#), [Nanavati Associates](#)

**Cases Referred in (+): 1**

**S. R. Brahmbhatt, J.**

**[1]** Heard Mr. Chudgar for M/s Nanavati Associates for the petitioner. None is present for respondent workman.

**[2]** The petitioner, opponent in Recovery(Central) Application (Old) No. 1 of 1981, and new No. 347 of 1982 in the Labour Court, Ahmedabad, filed by respondent workman under section 33-C(2) of the I.D. Act, 1947, has approached this Court under Article 226 as well as 227 of the Constitution of India, challenging the order in award dated 2/9/2002, where under the recovery application was allowed. The Bank was directed to pay Rs.1,51,610.30 along with cost of Rs.1,000/- to the heirs of the applicant within 30 days from the date of receipt of that order.

**[3]** Facts in brief leading to filing this petition as could be culled out from memo of the petition deserves to be set out as under.

The petitioner is one of the nationalized scheduled bank. The workman, namely Gopalbhai Wherewithal Katrine who passed away during pendency of recovery application and whose heirs were pursuing, as they were on record, was engaged by the Chairman of the Staff Quarter Committee vide appointment order dated 25/10/1975 to work as pump operator cum watchman in the staff quarters known as Bank of India Sub Staff Quarters. Thus, sub staff quarters are owned by Bank of India, i.e. present petitioner for accommodating their sub-staff on monthly license fee of Rs.40/-. Maintenance was to be looked after by the residents and they formed committee called Maintenance Committee, in which the residents requested the Estate Officer of the Bank to become Chairman of the Maintenance Committee which was accepted in his personal capacity, and as such maintenance committee had engaged the respondent workman for looking after the work of watch & ward and operating pump in the colony.

**[4]** This workman filed recovery application on 2/1/1981 for claiming difference of wages from the bank as he was employed by the bank and was not paid the wages as admissible by the bank. The recovery application contains schedule wherein details of difference was mentioned which was totaling to Rs.1,51,630.30. The bank filed its written statement which is at page no. 72 produced herein, completely denying the say of the workman and raising serious dispute qua workman's claim of being employed by the bank. The bank submitted that the workman had never been engaged by the bank nor was he engaged by the officers of the bank in discharge of duties as officer of the bank. The estate officer who had accepted chairmanship of the maintenance committee had not been instructed to do so by the bank nor was he authorized in any manner or was the bank started any such activity, as the estate officer was acting in his personal capacity. The bank has got nothing to do with the activities of maintenance committee qua the workman in question.

**[5]** The Labour Court framed three points for determination, namely as to:-

- (1) Whether the applicant proves that he was employed by the bank as pump operator cum watchman?
- (2) Whether the workman proves that he has any dues to be recovered from opponent as shown in Annexure-A to the application to the tune of Rs.1,51,610.30 ?
- (3) What order ?

**[6]** The first two issues were answered in affirmative and final order was passed directing the bank to pay the amount vide order dated 2/9/2002, which is impugned in this petition.

**[7]** This Court (Coram: Ms. R.M. Doshit, J {as she then was}) vide order dated 16/9/2003 issued Rule and granted ad-interim relief in terms of para no. 28(B) of the petition, whereby the impugned order was stayed.

**[8]** Learned counsel appearing for the petitioner relying upon the decision in case of [State of U.P. And Another Vs. Brijpal Singh](#), 2005 8 SCC 58, contended that the application in the present form requiring adjudication on the point of employer \employee relation could not have been maintained and accepted by the court under provision of Section 33-C(2) of the I.D. Act.

**[9]** Petitioner's counsel further contended that the point of determination clearly indicate that Labour Court exercised jurisdiction which was never vested in the court while hearing and deciding the matter of the claim of applicant under section 33-C(2) of the Act. The scope of inquiry and adjudication under section 33-C(2) is well settled by now, where under the claim which are required adjudication on basis of elaborate evidence or question of existence of rights cannot be subject matter of proceeding under section 33-C(2) of the I.D. Act.

**[10]** This Court has heard learned counsel for the petitioner and perused the application, written submission as well as the order. The Court is of the considered view that the petition is required to be allowed in its totality on the following grounds which are set out here under.

(a) The plain reading of section 33-C(2) would in itself go to show that the claim petition pre-supposes existence of employer-employee relationship and legally permissible dues to be recovered. When a serious question is raised on relationship of employer and employee which requires its adjudication by forming point for determination, the scope of adjudication under section 33-C(2) is not sufficient to clothe the court with a prior jurisdiction to indicate exercise of determining the same.

(b) This Court hasten to add here that frivolous contention with regard to non-existence of employer-employee relationship could be examined and brushed aside if found to be frivolous, but when there is prima facie allegation of nexus and relationship then the issue cannot be decided in form of recovery application under section 33-C(2) and it is required to be therefore elaborated by proper adjudication based upon evidence and findings.

(c) The scope of section 33-C(2) is aptly discussed by the Apex Court in case of State of U.P. And Another . Suffice it to say that the application in the present form could not have been subject matter of section 33-C(2) as to remind there is preliminary objection filed. The Court ceases to have jurisdiction unless & until

workman indicating that the objection was frivolous. In the instant case the objection cannot be said to be a frivolous one as the workman could not have been said to have even prima facie indicated that there is any nexus or relationship of employer-employee between him and the bank, so as to maintain the action against the bank for recovery.

(d) The tenor of the claim application on the face of it is sufficient to hold that there exists clear indication and admission on the part of the workman that he had never been engaged by the bank nor was he engaged by an officer acting under the authority of the bank so as to create relationship of employer-employee between two.

(e) The Court need not elaborately examine this aspect at this stage as this Court is concerned with the challenge to exercise of power and jurisdiction by the court under section 33-C(2) in respect of the question which was seriously disputed qua relationship of employer-employee. Therefore, assuming for the sake of examining without holding that the workman did have case to indicate that there existed relationship of employer-employee, then also the said exercise was required to be undertaken by way of filing or raising industrial dispute which would itself is required to be adjudicated by appropriate reference. In the instant case the workman did not choose to adopt the remedy available and straightway filed recovery application as if there existed relationship of employer and employee and he had a claim against the bank.

**[11]** In this view of the matter, the petition is required to be accepted as the order impugned in my view cannot be said to be tenable in eye of law. Section 33-C(2) would not encompass the elaborate adjudication procedure deciding the relationship of employer-employee which requires to be based upon the finding after leading elaborate evidence. Therefore, the order impugned can be said to be an order passed without jurisdiction. Hence the same is required to be quashed and set aside. Accordingly the impugned order is quashed and set aside.

**[12]** In the result the petition is allowed. Rule made absolute. However, there shall be no order as to costs.