
(1977) 08 CAL CK 0041
In the Calcutta High Court

Algemene Bank Nederland

APPELLANT

Vs

Central Government Labour Court and Others

RESPONDENT

Date of Decision : 05-08-1977

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33C
Payment of Wages Act, 1936 — Section 2, 7, 9

Citation : (1978) 1 CALLT 195 : (1978) 2 LLJ 117

Hon'ble Judges : Sabyasachi Mukherjee, J

Bench : Single Bench

Judgement

Sabyasachi Mukherjee, J.—Shyamapada Das, the respondent No. 2 is an employee of M/s. Algemene Bank Nederland, N. V. the petitioner herein. The petitioner carries on banking business in India and for this purpose employs various categories of employees, namely, officers, clerical staff and subordinate staff at its establishment at 18A, Brabourne Road, Calcutta. The said establishment is a commercial establishment within the meaning of the West Bengal Shops and Establishments Act, 1963 and as such is registered under the said Act. The banking industry has been declared by the appropriate Government as one engaged in the utility service. The terms and conditions of service, including the hours of work, wage structure of the employees are governed by the various awards, namely, Sastri Award, Desai Award and the Industry wise Bipartite Settlement, dated the 19th October, 1966 and various settlements arrived at subsequent thereto. It will be necessary at the relevant time to refer to the provisions of the Bipartite Agreement in detail. On the 10th September, 1975 the members of the staff, clerical and subordinate, excepting lady staff by ceasing work in combination left their respective places of work at 3 p.m. and according to the petitioner-Bank, illegally and wrongfully held a meeting and demonstration inside the Bank premises during the Bank's normal working hours by forming, again according to the petitioner-Bank, an unlawful assembly. The members of the said assembly including the respondent No. 2 Shyamapada Das

remained absent from their works, shouted slogans and squatted inside the premises without doing any work from 3 p.m. to 5-45 p.m. The petitioner-Bank without prejudice to its right to take disciplinary action issued a notice. The said notice after setting out the aforesaid facts contained the following statement :

Without prejudice to the right of the bank to take disciplinary action where warranted, the concerned members of the staff are hereby informed that they would not be entitled to any salary for their period of absence from their duty on the basis of "No work No pay." This will, however, not apply in cases of those who were on sanctioned leave on that day.

The petitioner-Bank paid wages to the workmen including the respondent No. 2, who had remained absent. on the 10th September, 1975 on a pro rata basis for the period they had rendered services and did not pay any wages for the period of absence. Thereupon, on the 17th May, 1976, the respondent No. 2 filed an application u/s 33C(2) of the Industrial Disputes Act, 1947 for recovery of a sum of Rs. 11.41 before the Central Govt. Labour Court at Calcutta. The respondent No. 2 alleged that the petitioner-Bank had wrongfully deducted Rs. 11.41 from the salary of the respondent No. 2 for the month of September, 1976. It was further alleged by the respondent No. 2 that neither in the bipartite settlement nor in any law of the land applicable to the parties, was there any provision for deducting monthly salary of any workman pro rata on the basis of the alleged, "No work No pay". The petitioner-Bank filed an objection to the said application and contended that the application u/s 33C(2) was misconceived and not maintainable. The petitioner contended that the workman concerned had no right under the law to claim wages for the period for which he did not work. It was further contended that the claim of the respondent No. 2 was not based on any claim for money or benefit derived under any Award or Settlement but on the ground that although the workmen of the Bank had remained absent from the duty, yet they were entitled to salary for the period of their absence. The petitioner contended that there was no right or entitlement of the respondent No. 2 for the money claimed. It was, therefore, submitted that the application u/s 33C(2) of the Industrial Disputes Act, 1947 was misconceived. The application came up for hearing before the Central Government Labour Court at Calcutta and by an order dated the 28th February, 1977 the Central Government Labour Court has allowed the application of the respondent No. 2 and has directed the Bank to pay Rs. 11.41. In the said order after setting out the rival contentions and the notice dated the 11th September, 1975 referred to hereinbefore, the Central Government Labour Court has proceeded, inter alia, to hold as follows :

5. Para 19.7 of the Bipartite Settlement dated 19-10-1966 deals with the "minor misconduct" which includes (a) absence without leave, (c) neglect of work, negligence in performing duties, (d) breach of any rule of business of the Bank or instruction for the running of any department, (e) committing nuisance on the premises of the Bank, etc. The management could have proceeded against the concerned workman under any or all of the grounds enumerated above for the

incident which took place on 10-9-1975 within the premises of the Bank. Without doing so they proceeded against the workman by deducting proportionate salary out of his monthly emoluments. The Bank cannot shut its eyes against the misconduct. It did not proceed against the workman by taking disciplinary action. Deducting a portion of the workman's salary without giving him an opportunity to explain his conduct and without taking disciplinary proceedings will amount to a punishment. No punishment can be imposed on a workman except in due process of law. So, the deduction of salary made in this case cannot be supported.

6. A workman is entitled to file an application u/s 33C(1) or (2) of the Act if he is to recover any amount legally due to him. There is nothing for the workman to establish before this Court except the fact that he was deprived of Rs. 11.41 p. out of his salary for the month of September, 1975. Normally he would be entitled to the amount claimed. He could not be deprived of that amount unless it was withheld in due process of law. The management did not follow any rule of law applicable to the parties before the amount of the salary was withheld. Withholding the salary is invalid and inoperative. The workman is entitled to get back the amount of Rs. 11.41 p. out of his salary for the month of September, 1975, from the Bank.

In this application under Article 226 of the Constitution, the petitioner-Bank has challenged the said finding and the decision of the Labour Court.

2. Two main contentions were urged in support of this application. It was contended, firstly, that, the Labour Court was in error in proceeding with the application in the instant case and the Labour Court had no jurisdiction in the facts and in the circumstances of this case, to make any order u/s 33C(2) of the Industrial Disputes Act, 1947. It was urged that the respondent No. 2 had no right or entitlement under the law to claim the said amount. The Labour Court, it was urged, was not competent to adjudicate the right and thereupon grant relief to the parties upon such adjudication of right. It was, secondly contended that in any event the Labour Court was in error in holding that the respondent No. 2 was entitled to wages for the hours he did not work and that the petitioner-Bank was not entitled to deduct the wages for the period of hours when this workman did not render any services. Various authorities, which I shall presently notice, were cited in aid of this submission. The respondent No. 2 submitted before me that the instant writ application of the petitioner was not maintainable. He urged that the service contract between the Bank and the employee was an indivisible contract and could not be made the subject-matter of appropriation. There was no right under the contract to deduct any wages for any period of days or of hours. He, further, submitted that there could not be any deduction of wages without due process of law. He urged that principles of natural justice had been violated and the principles of natural justice were attracted in the facts and circumstances of this case because the deduction of wages in the manner done was in the nature of punishment which could not have been inflicted without

following the procedure in accordance with the natural justice. He also relied on several authorities which I shall presently notice.

3. It is necessary to consider, first, the question whether in this case the respondent No. 2 was entitled to salary for the hours he did not work. In this connection, as mentioned hereinbefore, it is the common case that the Calcutta Branch of the petitioner-Bank was a commercial establishment coming within the purview of the West Bengal Shops and Establishments Act, 1963. Section 2(15) of the said Act defines wages. It provides that "wages" means wages as defined in the Payment of Wages Act, 1936. It is, therefore, necessary to refer to the definition of "wages" u/s 2(vi) of the Payment of Wages Act, 1936. The said provision reads as follows :

"Wages" means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment, or of work done in such employment and includes-

(a) any remuneration payable under any award or settlement between the parties or order of a Court;

(b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period ;

(c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name) ;

(d) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made ;

(e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force ; but does not include :

(1) any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court;

(2) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the State Government.

(3) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon ;

(4) any travelling allowance or the value of any travelling concession ;

(5) any sum paid to the employed person to defray special expenses entailed on

him by the nature of his employment ; or

(6) any gratuity payable on the termination of employment in cases other than those specified in Sub-clause (d).

While on the West Bengal Shops and Establishments Act, 1963 it may also be appropriate to refer to Section 7 of the said Act which lays down the hours of work in establishments. Section 14 deals with the payment and recovery of wages and it provides that all wages payable to a person employed in a shop or an establishment shall be paid not later than the 10th day of the month immediately succeeding in respect of which such wages are payable. Sub-section (2) of Section 14 provides that where any deduction has been made from the wages of any person employed in a shop or an establishment or any payment of wages to such person has not been made within the date referred to in Sub-section (1), such person may, within a period of six months from the date of which the deduction from the wages was made or from the date referred to in Sub-section (1), as the case may be, make an application to such an officer or authority as the State Government may, by a Notification, appoint for an order under Sub-section (3). Sub-section (3) of Section 14 is to the following effect :

(3). The officer or authority to whom or to which an application under Sub-section (2) is made may, after giving the applicant and the shopkeeper or employer concerned an opportunity of being heard and after making such further inquiry, if any, as may be necessary, by order, direct, without prejudice to any other action which may, under this Act or any other law, lie against the shopkeeper or employer, the payment to the applicant of the amount deducted from the wages or of the wages due, together with such compensation, not exceeding ten times the amount deducted in the former case and not exceeding ten rupees in the latter, as the officer or authority may think fit:

Provided that no direction for the payment of compensation shall be made in the case of delay in the payment of wages if the officer or authority is satisfied that the delay was due to-

(a) a bona fide error or bona fide dispute as to the amount payable to the applicant, or

(b) The occurrence of an emergency, or the existence of exceptional circumstances, such that the shopkeeper or the employer, as the case may be, was unable, though exercising reasonable diligence, to make prompt payment, or

(c) the failure of the applicant to apply for or accept payment.

In aid of the submission that wages is only payable for the work done, learned Counsel appearing for the petitioner-Bank first drew my attention to the decision of the Division Bench of the Bombay High Court in the case of *Arvind Mills Ltd. v. K.R. Gadgil* AIR 1941 Bom. 26. There Chief Justice Beaumont dealing with the definition of ""wages" in Section 2(vi) and Section 7 of the Payment of Wages Act, 1936, held that the expression "wages" means wages earned and not

potential wages. His Lordship further observed that the expression, "remuneration, which would, if the terms of the contract were fulfilled, be payable", in Section 2(vi) meant no more than, " remuneration payable on the fulfilment of the contract." His Lordship further was of the opinion that prima fade an employer was not bound to pay for work which had not been done and an employee was not entitled to receive payment which he had not earned. Reliance was also placed on the observations in the Halsbury's Laws of England, 4th Edition, Volume 16, Article 554 under the heading "performance of duty as condition precedent to remuneration". There it has been noted that when the contract of employment is an entire contract, providing for payment on the completion of a definite period of service or of a definite piece of work, it was a condition precedent to the recovery of any remuneration in respect of it that the services or duty should be completely performed, unless the employer so altered the contract as to entitle the employee to regard it as at an end, in which case the whole sum payable under the contract became due : or there was a usage that the employee was entitled to remuneration in proportion to the time actually served or it could be inferred from the circumstances that there had been a fresh agreement between the parties that payment should be made for services actually rendered under the original contract, or the contract had been frustrated. Under Article 610, Halsbury has noted that if there were normal working hours and the employee's remuneration for employment in those hours whether by the hour or week or other period, did not vary with the amount of the work done in the period, the employer is liable to pay the employee for the normal working hours as much as the amount which would have been payable if the employee had been employed throughout the part of the normal working hours during which he was ready and willing to work but no work was provided for him by his employer or he was incapable of work because of sickness or injury or if he was absent from working in accordance with the terms of his employment relating to holidays. If there are normal working hours, but the employee's remuneration or employment in those hours varies with the amount of work done in the period, the employer is liable to pay for the part of the normal working hours covered by the three divisions stated hereinbefore. In the case of N. Venkatavaradan Vs. Sembiam Saw Mills, Sembiam, Madras, , learned single Judge of the Madras High Court held that the jurisdiction of the authority under the Payment of Wages Act was limited to all claims arising out of deduction of wages and delay in payment of wages only. It was clear that wages was dependent upon the terms of the contract and not otherwise and if the terms of the contract did not show that the employee was entitled to continue his service irrespective of his not attending the work then the amount claimed for the period during which he did not work could not be considered to be wages within the definition of the term under the Act. In the case of The Divisional Engineer, G.I.P. Railway Vs. Mahadeo Raghoo and Another, , the Supreme Court after referring to the definition of the wages in Section 2(vi) of the Payment of Wages Act observed that shorn of all verbiage, "wages" are remuneration payable by an employer to his employee for services rendered according to the terms of the

contract between them.

4. The question then arises in each case, therefore, what are the terms of the contract between the parties. In the case of *Gaumont-British Picture Corporation Ltd., v. Alexander* [1936] 2 All ER 1886, it was held that the Court did not enquire into the adequacy of the consideration of a contract and where a party left the determination of all matters under a contract in the discretion of the other party that did not in all circumstances constitute the total lack of consideration. A clause in an artist's agreement suspending salary upon her failure to appear and perform did not prevent the employer's recovering damages for breach of contract as well as suspending her salary. The suspension of salary, it was held, was not penalty. In *Halsbury's Laws of England*, 3rd Edition, Vol. 25 under Article 897 it has been observed, a servant is under the obligation not to absent himself from work without good cause during the time at which he is required to be at work by the terms of his contract of service. If he absents himself without good cause, his master is entitled to recover damages against him for breach of contract and the absence of the servant may, if it amounts to misconduct inconsistent with the due and faithful discharge by the servant of his duties, constituted a good cause for his dismissal. Under Article 915 it had been observed that when the contract of a service was an entire contract providing for payment on the completion of a definite piece of work, it was a condition precedent to the recovery of any salary or wages in respect thereof that the service or duty should be completely performed, unless employer so altered the contract as to entitle the servant to regard it at an end in which case the whole sum payable under the contract becomes due.

5. In the case of *Secretary of State for Employment v. Associated Society of Locomotive Engineers and Firemen* [1972] (2) All ER 949, Lord Denning at page 967 of the report has observed that wages are paid for services rendered. In the *Contract of Employment*, M. R. Freedland, 1976 Edition at page 127 has noted that the question whether a contractual obligation is entire or divisible is a question of construction of the contract. But, according to him policy considerations enter into the process of construction because too strict a construction of obligations as entire and indivisible may result in unjust enrichment of the person under the obligation because it means that he may have the benefit of incomplete performance without paying anything for it. In the case of *Sukumar Bandopadhyay v. State of West Bengal*, 31 Cal WN 528 ; (1976) Lab. I.C. 1689), I had to deal with the question whether when leave had been properly refused an employee was entitled to the pay for the period of absence. It was held that in the absence of any rule, unauthorised absence from duty merited non-payment of salary for the day.

6. Before I part with this contention, it may be noted that, in the instant case, both parties relied on the terms and conditions of a bipartite settlement of industrial dispute between certain banking companies. Chapter IV of this settlement deals with under the category (iii) Part-time workmen and Clause 4.5

deals with the salary of par-time workmen. Chapter XIII deals with leave rules and Clause 13.2 deals with leave of absence. Clause 13.6 provides that leave of all kinds cannot be claimed as of right. Chapter XIV deals with hours of work and overtime, Clause 14.2 is to the following effect:

14.2-Subject to the provisions of Clauses 14.3 and 14.12 below, the actual hours of work of full-time workmen, exclusive or recess period shall be as specified below :

Week days (excluding Saturdays Saturdays) ----- (hours per day) (a) Workmen other than members of the Sub- ordinate staff (ex- cluding category (b) below) 6 1/2 4

(b) Godown-keepers en- gaged solely for that work other than those required to remain in attendance at the bank during office hours 8 8

(c) Members of the sub- ordinate staff other than Drivers and Watch & Ward Staff 7 4 1/2

(d) Drivers 7 1/2 5

7. Clause 14.14 provides for payment for overtime work and the calculation is made in the following manner :

Overtime work shall be paid for at the rates mentioned below :

%of hourly emolu- Week days ments (excluding Saturdays Saturdays (excluding and holidays) holidays) Workmen other than members of the Sub- ordinate Staff.

First two quarter hours of overtime work @ 100 @ 100

Next four quarter hours of overtime work @ 170 @ 170

Next four quarter hours of overtime work @ 200 @ 170

Rest of the overtime work @ 200 @ 200

%of hourly emolu- Weekdays ments (excluding Saturdays Saturdays (excluding and holidays) holidays)

Subordinate Staff:

First four quarter hours of overtime work @ 150 @ 150

Next four quarter hours of overtime work @ 200 @ 170

Rest of the overtime work @ 200 @ 200

8. Clause 14,16 is important and provides as follows :

14.16. For the purpose of calculating the amount payable for overtime work:

(a) work done for less than one full quarter of an hour shall be deemed to be

work done for quarter of an hour ;

(b) the expression "emoluments" shall aggregate of basic pay, special allowance (if any), officiating allowance (if any) and clearness allowance ;

(c) every month shall be deemed to consist of 150 working hours so that the monthly emoluments payable per hour will be deemed to be 1/150th of the monthly emoluments, for all workmen.

9. Chapter XIX deals with disciplinary action and procedure therefore which is not necessary for me to refer in detail - except that Clause 19.5 deals with the gross misconduct and Clause 19.7 with minor misconduct where absence without leave or overstaying sanctioned leave has been mentioned as minor misconduct. Clause 19.10 deals with the manner of holding proceedings for such misconduct, as this chapter provides for holding proceedings for such misconduct.

10. Most of these authorities mentioned above were reviewed by A.N. Sen, J., in the case of *Manoj Kanti Basu v. Bank of India*, (1976 (2) Cal. L.J. 427. There, the contentions concerned the rights and obligations of the management and the award staff of a nationalised bank. The petitioners in that writ application who were employees raised the following contentions :

(1) In the absence of any specific provision in the contract of employment or in any statute, the Bank had no power or authority to deduct any part of the salary of the award staff who were permanent employees of the Bank on the basis of monthly salaries payable to them under the contract of employment;

(2) The monthly pay of an employee was his property and no employee could be deprived of his pay except in due process of law ;

(3) Any diminution in the monthly pay of an employee would affect his right and interest prejudicially and no order could be made by the Bank reducing the monthly salary under the contract or deducting any part therefrom without giving the employee concerned reasonable opportunity of making the representation ;

(4) The order in question were mala fide and

(5) if the Bank which was a statutory body made any order in excess of its power and authority such order was violative of the principles of natural justice and could be questioned in a writ proceeding.

It was held by A.N. Sen, J., in that decision that the members of the award staff were permanent employees of the Bank. An employee was entitled to a monthly salary on the basis of his scale of pay under the terms of the employment. The monthly salary payable to the employee was a fixed sum. Under the contract of employment, the employee was required to work during fixed working hours. Although the employee was required under the contract, to work during fixed hours, it could not be said that the employee was paid on the basis of the number of hours of work put in by the employee in course of any month. In the instant case, the contract of employment, according to the learned Judge, was

not a divisible one. The consideration for payment of the salary to the employee might be the services to be rendered by him. The consideration was not related to any fixed period of work for any month. The consideration was one and indivisible and was not entirely dependent on the particular hours of work put in. The consideration being one, the failure or refusal on the part of one employee to do the fixed period of work on any particular day resulted in the partial failure of the consideration in consequence whereof the employer might claim compensation against the employee. But the employer could not claim the right to deduct any part of the salary on any pro rata basis or otherwise. The definition of a term in any particular statute, according to the learned Judge was for the proper understanding of the meaning and import of the term used in the statute for the purpose of true construction of the statute in which the said term had been used by applying the definition of the term wherever the said term had been used in the statute. The definition of any word by itself did not create any right or liability. It was only intended to give the true meaning of the word defined and used in the various sections of the statute. The rights and obligations under a statute arose not under the definition of any work in the statute creating such rights and obligations. In construing a statute and its various provisions the definition of the word given in any statute had to be generally accepted. According to the learned Judge the definition of "wages" in the Payment of Wages Act was of no help so far as the case before him was concerned. The Payment of Wages Act had no application to that case. The Shops and Establishments Act which applied to the case, contained no provisions similar to Sections 7 and 9 of the Payment of the Wages Act. His Lordship held that an act of refusal or failure on the part of employees to carry on with their work during working hours might amount to misconduct and suitable disciplinary action might be taken by the employer. But for such an act of the employee, the employer was not entitled to deduct his wages. His Lordship also held that there was no violation of the principles of natural justice in making the order for deduction from the salary of the employees for their unauthorised absence on 30th June, 1976.

11. In the instant case before me the petitioner had employed the respondent No. 2. There was a promise of doing work by the respondent No. 2 on certain terms and these of terms enjoined that the respondent No. 2 would in perform the work for certain hours in a month. His right to get remuneration is calculated on monthly basis but upon the performance of his work during the working hours, as stipulated in the agreement. In this context good deal of controversy has been raised on the question whether the contract was entire or divisible in the sense whether the employee earned the right to get the wages for any particular hour of work. On behalf of the petitioner, stress had been laid on Chapter XIV of the settlement between the parties which indicated that overtime wages had to be calculated on hourly basis, Therefore, the remuneration payable to employee was based on hourly work. On the other hand, the respondent No. 2 has contended that the respondent was not a workman getting

his salary hourly. He was a workman employed whose salary was calculated monthly. His right to get the remuneration or his right to get the consideration for his work was not correlated with hourly work. He has further argued before me that if the basis upon which the overtime was calculated is applied for payment of his wages it would result in an incongruous situation for payment of his monthly salary.

12. I am of the opinion that the wages, as in the words of Lord Denning, are the payment for services rendered. I am inclined to think that it is not so much a question of whether the contract is divisible or entire but of reciprocal promises as the consideration, that is to say, the employer provides the employment and pays the remuneration and the employee performs the work during the period he is supposed to do the work. Therefore, the right of the employee to get the remuneration depends upon the performance of his work during the period of employment. If there is any failure of that consideration then taking a strict view of the matter the employer is entitled to refuse any payment at all. But, as has been noticed in "The Contract of Employment" by M. R. Freedland. referred to hereinbefore, very often policy considerations enter and deduction on pro rata basis is made to avoid undue hardship in the employer-employee relationship. It is true that the definition of the Payment of Wages under the Shops and Establishments Act, which is applicable to the instant case, and the deduction of which wage is made an offence u/s 14 the Shops and Establishments Act brings the definition provided by the Payment of Wages Act and that definition in express terms remuneration that would have been payable the terms of employment were fulfilled and one of the main terms of employment is undoubtedly in the instant case that the employee, would work for a specified period of work during the working hours. Therefore, if the employee does not work for a specified period of work then the remuneration would not be payable. But in the instant case, because of the next aspect of the matter which I shall presently discuss it is not necessary for me to rest my decision on this aspect of the matter. But I express the above view about the employer's right to deduct wages tentatively with great respect of A.N. Sen, J.

13. As mentioned hereinbefore I am concerned in this application with the order of the Labour Court u/s 33C(2) of the Industrial Disputes Act, 1947. That section provides as follows :

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.

Therefore, a workman in order to come within the purview of this section must be entitled to receive from the employer any money or benefit. Now, this entitlement may depend upon an adjudication of right or may depend upon an

interpretation of certain existing rights. If this entitlement depends upon an adjudication of the right for the first time then that adjudication cannot, in my opinion, come within the purview of Section 33C(2). That adjudication may also be dependent on interpretation or construction of certain terms on which two reasonable and possible views are possible. If, on the other hand, the right is patently there but it has to be found out by reading of any document, settlement or award, that could be done within the purview of this section. Now, in the case it is apparent from the rival contentions, which I have set out hereinbefore, that there is no clear existing right. The petitioner was claiming that under the contract between the parties, there is no right of the respondent No. 2 to claim wages for the period he did not work. That right of the petitioner not to pay wages for the period the petitioner did not receive services of its employee was based upon the contract under the provisions of the West Bengal Shops and Establishments Act, 1947 and upon the implied terms and usages in the trade. On the other hand, on behalf of the workman, respondent No. 2 herein that right was being claimed not so much from any contract as such but upon the implied term of the dealings between the parties. Therefore, in my opinion, in this case that right had to be established before the entitlement could be demonstrated. In the case of Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, , the Supreme Court held that a proceeding u/s 33C(2) was a proceeding generally in the nature of an execution proceeding wherein the Labour Court calculated the amount of money due to a workman from his employer, or if the workman was entitled to any benefit which was capable of being computed in terms of money, the Labour Court computed the benefit in terms of money. There, the Supreme Court observed that in a proceeding u/s 33C(2) the principal business was just computation of a benefit demonstrably existing. The respondent No. 2 drew my attention to the decision in the case of Central Bank of India Ltd. Vs. Sisir Kumar Shaw, , where the Supreme Court observed that Labour Court was competent in an application u/s 33C(2) to interpret the terms of bipartite agreement to find out whether an employee was entitled to any benefit or not. With respect that must be so if it is an executing Court, the Labour Court is entitled to look to the document giving the right to find out what the right is. But if the right has not been adjudicated at all or the right is dependent upon construing or interpreting certain documents upon which two view were reasonably possible then no question of interpreting right as such arises. In the instant case, it is not so much as interpreting the settlement but adjudicating the right and in that adjudication bipartite settlement is only one piece of evidence that is required to be looked into. In this background, therefore, I am of the opinion that in view of the contentions raised in this case the Labour Court was not competent to make the order under the purview of Section 33C(2) of the Industrial Disputes Act. The fact that the petitioner could have proceeded against the respondent No. 2 as a punishment does not, in my opinion, detract from the petitioner's right not to pay the wages if the petitioner is entitled to deduct it. The fact that the unauthorised absence is a minor misconduct does not prevent the petitioner from not paying the salary if under

the terms of the contract the respondent No. 2 has not earned the salary for not doing the work. In such a case, no question of giving any opportunity to the respondent No. 2 arises and therefore, there is no question of violation of principles of natural justice. The respondent No. 2 has urged before me that this writ petition was not maintainable because even if the decision of the Labour Court was erroneous, this Court should not interfere with such a decision. If the error committed by the respondent No. 1 had been an error within the jurisdiction then this contention of the respondent No. 2 would have been sound. But, as I have held, that the respondent No. 1 has committed an error which is in excess of his jurisdiction, this error is amenable to writ jurisdiction of this Court. It was further urged that there could not be deprivation of wages without due process of law. If there was a pre-existing right of the respondent No. 2 to the wages which has been denied to him then only such wages could not have been denied to him without due process of law. But, here the very question is whether the respondent No. 2 is entitled to the wages for the period of hours of work that he has not done, That right has to be established by proper adjudication in a proper forum and until the right is established it cannot be said that there has been deprivation of any of his right without due process of law. It was then contended that there has been violation of the principle of natural justice. As, I have held that the question whether the respondent No. 2 is entitled to his wages is not so much a punishment but a question of his right, in my opinion, no question of principles of natural justice arises in this case. There are some other authorities which were referred to but in the view I have taken it is not necessary for me to deal with the same in any great detail.

14. In the aforesaid view of the matter, this application succeeds and the rule nisi is made absolute. The order of the Labour Court is set aside and quashed and the respondents restrained from giving effect to the same. But this order will not prevent the respondents from raising or agitating this question in an appropriate forum in accordance with law. There will, however, be no order as to costs.

15. I must note in conclusion that the respondent No. 2 appeared in person and has rendered great assistance to this Court.