

(1995) 03 BOM CK 0044

In the Bombay High Court

Case No : Writ Petition No. 4181 of 1988

Balwant Dinkar Kadam

APPELLANT

Vs

Mcgay Industries and Others

RESPONDENT

Date of Decision : 03-03-1995

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(s), 33C(2)

Citation : (1995) 70 FLR 1064

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Advocate : Balwant Dinkar Kadam, for the Appellant; MCGAY Industries and ors., for the Respondent

Judgement

1. This writ petition under Articles 226 and 227 of the Constitution of India impugns an order of the Second Labour Court, Pune dated 6.5.1988 made in Application (IDA) No. 105 of 1987 under the provisions of section 33C(2) of the industrial Disputes Act, 1947 (hereinafter referred to as "the Act").

2. The petitioner moved the Labour Court u/s 33C(2) of the Act claiming a sum of Rs. 34,264.80 from the first respondent. It was the petitioner's case in his application before the Labour Court that he was employed in the first respondent's employment from September 1976 as a Pantograph Operator on permanent basis and that his services were abruptly terminated on 30.10.1986 without payment of notice pay or compensation. He also alleged that he had been paid his monthly wages from June 1985 onwards. The petitioner claimed a sum of Rs. 22,100/- (Rupees Twenty Two Thousand Hundred only) for the period 1st June 1985 to 31st January, 1986 as earned wages at the rate of Rs. 1300/- per month, retrenchment compensation of Rs. 6,500/- (Rupees Six Thousand Five Hundred only), encashment of leave for two years at the rate of 15 days salary quantified at Rs. 1,300/- (Rupees One Thousand Three Hundred only), notice pay of one month of Rs. 1,000/- (Rupees One Thousand Only), bonus for the period 1984-1985 and 1985-86 to the tune of Rs. 2,164.80 (Rupees Two

Thousand One Hundred Sixty Four and paise Eighty only) and Court expenses of Rs. 500/- (Rupees Five Hundred only), totalling to Rs. 34,264.80/- (Rupees Thirty Four Thousand Two Hundred Sixty Four and Paise Eighty only).

3. The application of the petitioner was opposed by the first respondent by its written statement in which the first respondent admitted that the petitioner was drawing a salary of Rs. 1,300/- per month, but maintained that all his wages had been paid from time to time. The principal ground on which the application was opposed was that the petitioner was not a "workman" within the meaning of section 2(s) of the Act as he was performing duties of managerial nature and looking after the factory of the first respondent. The petitioner examined himself in his support before the Labour Court. He stated on oath that the first respondent had failed to pay his dues despite a written demand made by him. He also produced a letter dated 30th August, 1986, addressed by the first respondent to the Manager, State Bank of India, Pimpri Branch, Pune, a copy of which had been endorsed to the petition. Apparently, the petitioner had applied to the Bank for loan and the Bank had addressed the said letter to the first respondent employer for satisfying itself about the financial status of the petitioner. The importance of the said letter from the stand point the petitioner was that, in this letter the first respondent in terms said :

"I hereby have to mention that, due to our Mr. Gaikwad's health problems my business has suffered seriously and hence I have not been able to pay the salary of Mr. B. D. Kadam for last about 12 months."

During his cross-examination, the petitioner was confronted with a voucher dated 30th October, 1986, acknowledging a receipt of Rs. 1300/- towards monthly salary. The petitioner admitted the said voucher to be correct and as having been signed by him, though he denied that the voucher was towards the salary for the month of October, 1986. The first respondent did not lead any evidence in the matter apart from confronting the petitioner with the original voucher for a month, which it is not possible to decipher ex facie. This was the state of evidence before the Labour Court. Upon assessment of this evidence the Labour Court came to the conclusion that the petitioner was a "workman" within the meaning of section 2(s) of the Act and, therefore, the application was tenable. It also took the view that since the petitioner had worked upto 30th October 1986, he had a right to recover his wages and, therefore, the claim was maintainable. Thereafter the learned Judge seems to have abruptly proceeded at a tangent, which is somewhat puzzling. Having once accepted the petitioner's claim as genuine and that he was entitled to wages which he legitimately claimed in his application before the Labour Court, the learned Judge of the Labour Court proceeded to demolish the claim by curious arguments. Instead of reading the letter dated 30th August, 1986, from the first employer to the Bank for what it was, namely, an admission of the fact that the petitioners' salary had not been paid for the previous 12 months, the Labour Court seems to have read between the lines of this letter and inferred that this letter showed that the petitioner's

salary upto and including October 1986 had been paid. I find it difficult to follow the convoluted reasoning adopted by the learned Judge of the Labour Court to arrive at the conclusion that the petitioner must have been paid all his salaries for the period in question and also that he must have been receiving advances from his employer. The petitioner was confronted with a voucher showing a blank with respect to a month and it was suggested in his cross-examination that it was a voucher for the month of October, 1986. The petitioner denied the suggestion. There was nothing else, *ex facie*, in the voucher to show that it was payment for the month of October, 1986. All that happened is that the petitioner admitted receipt of Rs. 1300/- as shown in this voucher. At the highest, his claim could have been reduced to that extent. Instead of doing this, the learned Judge of Labour Court comes to a finding that it was the payment of wages for October 1986 and that the fact that the petitioner had not disclosed that it was the payment for October, 1986 must lead to an inference that his entire evidence is unbelievable and further that the facts mentioned in the letter dated 30th August, 1986, from the first respondent to the Manager of the State Bank of India, Pimpri Branch, Pune, must lead to the inference that all dues/salaries had been paid to the petitioner.

4. As regards the claim for bonus, the learned Judge of the Labour Court rejected it by a reasoning which was even curiuser. The reasoning of the learned Judge is that there was of course no positive proof of non-payment placed on record. This was the reason for disallowing the claim for bonus. Finally, he concluded that the petitioner was entitled to a sum of Rs. 8,800/- (Rupees Eight Thousand Eight Hundred only) towards one month's notice wages and retrenchment compensation. Hence the writ petition.

5. The reasoning of the Labour Court in rejecting the claim of the petitioner appears to be totally perverse and unsustainable. The petitioner is entitled to a sum of Rs. 20,800/- (Rs. 22,100/- minus Rs. 1,300/-) (Rupees Twenty Thousand Eight Hundred only) towards his wages for the period 1st June, 1985 to 31st January, 1986. The claim for leave wages would have to be disallowed because it is not shown that the leave was there to his credit or under what provision its encashment was claimed. In any event, it is doubtful that such a claim could have been entertained u/s 33C(2) of the Act.

6. The petitioner is entitled to the minimum bonus of 8.33 per cent in both the years since there appears to be really no contest about it. The bonus amount comes to Rs. 1,300/- for the two years put together. He shall also be entitled to a sum of Rs. 500/- as costs.

7. In the result, the petition is allowed. The impugned order is modified to the extent that, in addition to the sum already granted under the impugned order, the petitioner shall be entitled to recover from the first respondent a sum of Rs. 23,100/- (Rupees Twenty Three Thousand One Hundred only) plus Rs. 500/- (Rupees Five Hundred only) as costs, totalling to Rs. 23,600/- (Rupees Twenty Three Thousand Six Hundred only). The aforesaid amount shall be paid to the

petitioner within eight weeks from today.

8. Rule made absolute accordingly.

Certified copy expedited.