

(1983) 07 DEL CK 0011
In the Delhi High Court
Case No : C.W.P. No. 359 of 1981

Bharat Krishak Samaj

APPELLANT

Vs

M.L. Kakkar and others

RESPONDENT

Date of Decision : 10-07-1983

Acts Referred:

Citation : (1984) 1 LLJ 251

Hon'ble Judges : A.B. Rohtagi, J

Bench : Single Bench

Judgement

1. This is a petition by Bharat Krishak Samaj (Farmers Forum India) impugning the order of the Labour Court, dated 4th July, 1980.

2. These are the facts : Respondent 3, Prithi Singh is the workman. He was working as a driver with the management of Bharat Krishak Samaj from 1960 to 1976 his services were terminated by the Samaj. So he raised an industrial dispute. The Delhi Administration under S. 10 of the Industrial Disputes Act (the Act) referred it to the Labour Court.

3. Contemporaneously he made an application under S. 33C of the Act alleging that he did four extra work beyond his normal working hours and he was not paid overtime wages for this period of sixteen years. He claimed overtime wages at the rate of Rs. 8 per day, for working four hours a day. The total amount he claimed was Rs. 36,795.

4. Both the claims were contested by the Samaj before the Labour Court. The Labour Court held that the workman's services were illegally terminated. Before the question of reinstatement arose the workman got an employment in the establishment of the High Court. Therefore, he did not claim reinstatement. He, however, claimed compensation for wrongful termination of his service. The Labour Court awarded him Rs. 5,000 as compensation in view of the reinstatement. The Samaj challenged the award of the Labour Court by means of a writ petition in this Court. That petition was dismissed liming. The Samaj

thereafter paid him Rs. 5,000.

5. On the claim of overtime work the Labour Court held that he was entitled to a sum of Rs. 9,600 only. The Court decided that he did work overtime but confined the claim only to a period of about five years which was, according to the Court -

"adequate view of the fact that no overtime prayer had been made by the applicant prior to 1976."

This conclusion was arrived at by the Labour Court on the evidence led by the workman.

The workman's evidence, the Court found, "was convincing". The management did not lead any evidence. They were asked to produce the log book from where it could be ascertained whether the workman had worked overtime. The log book was not produced in spite of the application of the workman for its production. So the Labour Court found that the workman was entitled to overtime wages but awarded only Rs. 9,600 on the view that beyond five years it was not possible to go. The Samaj had brought this writ petition challenging the award of Rs. 9,600 to the workman on account of overtime wages.

6. The first and the foremost contention of Sri Suri, on behalf of the Samaj, is that the Labour Court had no jurisdiction to determine this claim of the workman. He referred me to the Second and Third Schedule to the Act. He says that the claim for overtime wages does not fall in the Second Schedule and, Therefore, was not within the jurisdiction of the Labour Court to decide. He relies on entry (1) of the Third Schedule, namely, "wages, including the period and mode of payment", and submits that this matter, properly speaking, fell within the jurisdiction of the Industrial Tribunal under S. 7A. In any event, the application under S. 33C was incompetent. This is his main contention. In support of his submission he referred me to *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, .

7. Before I deal with the contention of Sri Suri it is necessary to point out that the question of jurisdiction was neither raised before the Labour Court nor in the present petition, Sri Suri concedes this. But he says that since this is a point of jurisdiction he can take it for the first time in this Court. I do not agree. In *Sohan Singh v. General Manager, Ordinance Factory, Khamaria* 1981 Lab. I.C. 1520, the Supreme Court decided that the plea challenging the jurisdiction of the Labour Court should not be allowed to be raised for first time in the writ petition in the High Court. The Court held that the High Court ought not to have entertained the plea which was raised before it for the first time. Instead of challenging the competence or the jurisdiction of the Labour Court the Samaj went to trial, submitted to its jurisdiction and when decision was given against them by the Labour Court they for the first time challenged its jurisdiction in the High Court. On the facts on this case I am satisfied that the point of jurisdiction ought not to be entertained which the management has raised for the first time in this Court.

8. This apart I am of opinion that there is no merit in the contention of Sri Suri. What the workman raised before the Labour Court under S. 33C was not an industrial dispute. He simply made an application to the Labour Court under S. 33C(2) praying that the amount of overtime wages may be computed. The workman's right to overtime wages was based on the statutory provisions of the Delhi Shops and Establishments Act, 1954. The right being a statutory right, the Labour Court was asked to compute it in terms of money. The workman was able to show that he actually did work overtime and was not paid wages therefore. All that the workman asked for the computation because the right could not be disputed by the employer in view of the provisions of the Delhi Shops and Establishments Act.

9. As I see the only argument is that the Labour Court did not have jurisdiction to entertain the application under S. 33C. If there is no industrial dispute and if the workmen has a right to overtime wages, and if on evidence he is able to establish that he had actually worked beyond his normal working hours, I do not see why the Labour Court cannot compute the amount. It is not a question of the Second Schedule or the Third Schedule, as Sri Suri says. It is a question of which a clear answer has been given by S. 7 of the Act. S. 7(1) says that :

"The appropriate Government may, by notification in the official gazette, constitute one or more Labour Courts for adjudication of industrial dispute relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under this Act."

10. The matter of computation is a function which has been specifically assigned to the Labour Court by the Act. The Labour Court by reason of the express provisions is clothed with jurisdiction to deal not only with matter set out in Second Schedule but also perform other functions assigned to it under the Act. So if an application Under S. 33C(2) is competent, there is no reason why the Labour Court cannot entertain it. The Second and the Third Schedules to the Act would become relevant and the jurisdiction connected with the matters enumerated in those schedules would spring into existence only when there is an industrial dispute. When there is no industrial dispute at all, there is no scope for referring either to the Second Schedule or to the Third Schedule. See *South Arcot Electricity Distribution Company v. Elumalal and others* 1959 1 L.L.J. 624.

11. There is no industrial dispute in the present case. The workman had a claim for overtime wages for the work done by him in the course of his employment, before his services were terminated. The Labour Court confined the claim till the date his services were terminated. His claim was accepted for the last five years of service but not beyond that. Under S. 33C(2) the Labour Court is expressly empowered to deal with a claim of this kind. The objection of Sri Suri that the Labour Court had no jurisdiction must fail.

12. The question of computation is essentially, in the nature of execution proceedings and is not meant to include in it proceedings for adjudication of

industrial disputes which can only be competently decided by a Labour Court on a reference by the appropriate Government under S. 10(1) of the Act. This is exactly what was decided in Central Bank of India case (vide supra), on which Sri Suri so strongly relied, I do not think there is anything in that case which supports the contention of Sri Suri.

13. S. 33C(2) sets up a little piece of machinery for working out the amount where there is no industrial dispute and where the right is based either on a contract or a statute. It will be anomalous to hold that the workman for the purpose of mere computation of the amount must go to the appropriate Government every time and raise an industrial dispute for that purpose under S. 10 of the Act. The claim for overtime wages, in my opinion, made by the workman was a matter for the Labour Court to compute under S. 33C(2). This the Court did and arrived at the conclusion that a sum of Rs. 9,600 was due from the Samaj to the workman.

14. Sri Suri next contended that there was no evidence before the Labour Court on which the conclusion could be arrived at. This argument is not open to counsel in this proceedings under Art. 226. There was evidence of the workman. He was cross-examined at length by the Samaj. His evidence was found to be convincing. The Samaj did not produce the log book. They did not adduce any evidence in opposition to the claim of the workman. On the evidence on record the Labour Court found in favor of the workman and awarded the sum of Rs. 9,600. This Court cannot reappreciate the evidence because the would transform this Court into an Appellate Tribunal. Evaluation of evidence is not the function of this Court under Art. 226. See Syed Yakoob Vs. K.S. Radhakrishnan and Others, .

15. For theses reasons the writ petition is dismissed with costs.

16. The Division Bench stayed the recovery of this amount of Rs. 9,600 at the time of the admission of the petition on 2nd March, 1981. I vacate the stay order and direct the Samaj to pay this amount within one month. If not paid the workman can apply for recovery.