

(1983) 07 DEL CK 0005

In the Delhi High Court

Case No : Civil Writ Petition No. 359 of 1981

Bharat Krishak Samaj

APPELLANT

Vs

N.L. Kakkar and Others

RESPONDENT

Date of Decision : 19-07-1983

Acts Referred:

Citation : (1984) 25 DLT 426

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

Bench : Single Bench

Advocate : Dewan Naubat Rai and Raj Birbal, for the Appellant;

Judgement

Avadh Behari Rohatgi, J.

(1) This is a petition by Bharat Krishak Samaj (Farmers Forum India) impugning the order of the labour court dated 4-7-1980,

(2) These are the facts. Respondent No. 3, Prithi Singh is the workman. He was working as a driver with the management of Bharat Krishak Samaj from 1960 to 1976. In 1976 his services were terminated by the Samaj. So he raised an industrial dispute. The Delhi Administration u/s 10 of the Industrial Disputes Act (the Act) referred it to the labour court.

(3) Contemporaneously he made an application u/s 33C of the Act alleging that he did four hours extra work beyond his normal working hours and he was not paid overtime wages over this period of 16 years. He claimed over time wages at the rate of Rs. 8.00 per day, for working four how a day. The total amount he claimed was Rs. 36,795.00.

(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 services. The

labour court awarded him Rs. 5,000.00 as compensation in lieu of reinstatement. The Samaj challenged the award of the labour court by means of a writ petition in this Court. That petition was dismissed in limine. The Samaj thereafter paid him Rs. 5,000.00.

(5) On the claim of over time work the labour court held that he was entitled to a sum of Rs. 9,600.00 only. The court decided that he did work over time but confined the claim only to a period of about 5 years which was, according to the court, "adequate in view of the fact that no over time 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 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 over time. 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 over time wages but awarded only Rs. 9,600.00 on the view that beyond 5 years it was not possible to go. The Samaj had brought this writ petition challenging the award of Rs. 9,600.00 to the workman on account of over time wages.

(6) The first and the foremost contention of Mr. Suri on behalf of Samaj is that the labour court had no jurisdiction to determine this claim of the workman. He referred me to the Second and the Third Schedules to the Act. He says that the claim for over time 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 I 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 u/s 7A. In any event the application u/s 33C was incompetent. This is his main contention. In support of his submission he referred me to Central Bank of India vs. Rajagopalan 1963 2 Lj 89.

(7) Before I deal with the contention of Mr. Suri it is necessary to point out that the question of jurisdiction was neither raised before the labour court nor in the present petition. Mr. 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 vs. G.M., 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 the 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 challenge its jurisdiction in the High Court. On the facts of 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 Mr. Suri.

What the workman raised before the labour court u/s 33C was not an industrial dispute. He simply made an application to the labour court u/s 33C(2) praying that the amount of over time wages may be computed. The workman's right to over time wages was based on the statutory provisions of the Delhi Shop and Establishment 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 over time and was not paid wages therefore. All that the workman asked for was computation because the right could not be disputed by the employer in view of the provisions of the Delhi Shop and Establishment Act.

(9) As I see the only argument is that the labour court did not have jurisdiction to entertain the application u/s 33C. If there is no industrial dispute and if the workman has a right to over time 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 Mr. Suri says. It is a question of which a clear answer has been given by section 7 of the Act. Section 7(1) says that :

"THE appropriate Government may, by notification in the Official Gazette, constitute one or more Labour Courts for the adjudication of industrial disputes 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 provision is clothed with jurisdiction to deal not only with matters set out in second schedule but also perform other functions assigned to it under the Act. So if an application u/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 S.A. Elec. Distribution Co. vs. Elumalai and ors. 1959 1 Lj 624).

(11) There is no industrial dispute in the present case. The workman had a claim for over-time 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. u/s 33C(2) the labour court is expressly empowered to deal with a claim of this kind. The objection of Mr. 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 u/s 10(1) of the Act. This is exactly

what was decided in the Central Government of India's case (supra) on which Mr. Suri so strongly relies. I do not think there is anything in that case which supports the contention of Mr. Suri.

(13) Section 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 u/s 10 of the Act. The claim for over time wages, in my opinion, made by the workman was a matter for the labour court to compute u/s 33C(2). This the labour court did and arrived at the conclusion that a sum of Rs. 9,600.00 was due from the Samaj to the workman.

(14) Mr. Suri next contended that there was no evidence before the labour court on which this conclusion could be arrived at. This argument is not open to counsel in these proceedings under Act. 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. 9,600.00. This court cannot reappreciate the evidence because that 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 these reasons the writ petition is dismissed with costs.

(16) The division bench stayed the recovery of this amount of Rs. 9,600.00 at the time of the admission of this petition on March 2, 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.