

(1985) 12 AHC CK 0028
In the Allahabad High Court
Case No : Writ Petition No. 2346 of 1979

Chandra Extrusion Products, Teli Bagh, Lucknow	APPELLANT
Vs	
Kamal Kishore Tripathi and Another	RESPONDENT

Date of Decision : 20-12-1985

Acts Referred:

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

Citation : (1985) 12 AHC CK 0028

Hon'ble Judges : Brijesh Kumar, J

Final Decision : Dismissed

Judgement

Brijesh Kumar, J.—By means of this petition the petitioner has challenged the order dated July 16, 1979 passed by the Presiding Officer, Labour Court, U.P., Lucknow, partly allowing the application of opposite party no. 1 under Section 33C (2) of the Industrial Disputes Act, 1947.

2. A true copy of the application moved by opposite party no. 1 under Section 33C (2) of the Industrial Disputes Act has been filed as Annexure I to the writ petition. Through the said application the opposite party no. 1 claimed wages for overtime work done by him during the period beginning since January 1976 to February, 1978. Annexure A to the said application gives the details about the claim of overtime including the total hours of overtime work done by him as well as the rate at which the wages for overtime had been claimed. It has been claimed that the employer should have paid for the overtime work in accordance with the provisions of the Factories Act, 1948. (In defence, the employer did not dispute the fact that the opposite party no. 1 was employed in their concern at the given rate of wages during the period the workman alleged to have done overtime work but it has been denied that as per records of the establishment opposite party no. 1 had not done any overtime work, therefore, the employer was not liable to make the payment as claimed. The parties led their oral as well as documentary evidence and the Presiding Officer, Labour Court, U.P., Lucknow, by its order dated July 16, 1979 partly allowed the application holding that the

opposite party no. 1 had done overtime work.

3. It has been contended on behalf of the petitioner that the finding of the Presiding Officer to the effect that the opposite party no. 1 had done overtime work is liable to be set aside as it has been recorded ignoring the statement of one of the partners of the concern who had given his statement on oath. A perusal of the order passed by opposite party no. 2 shows that it had taken into consideration all relevant and material evidence while recording a finding that opposite party no. 1 had done overtime Work. Reliance has been placed upon the Attendance Cards of the applicant issued by the employer indicating therein the period of overtime work done by the opposite party no. 1. At many places the opposite party no. 2 has also referred to the statement of the partner of the concern who has appeared in the witness box. I find no good ground to interfere with the findings of fact arrived at by opposite party no. 2.

4. The next contention raised on behalf of the petitioner is that the application of opposite party no. 1 under Section 33C (2) of the Industrial Disputes Act was not maintainable in as much as the proceedings under the said provisions are in the nature of execution proceedings and the claim which involves investigation of facts and determination of claimant's right to relief and corresponding liability of the employer is outside the scope of Section 33C (2) of the Industrial Disputes Act. In support of contention the petitioner's counsel has placed reliance upon a case reported in (AIR 1975 SC 1604) Central Inland Water Transport Corporation Ltd., v. Workman and another. In the said case decided by a Division Bench of the Hon'ble Supreme Court it has been held that the proceedings under Section 33C (2) are in the nature of execution proceedings and, therefore, the scope of subsection (2) of Section 33C of the Industrial Disputes Act is limited. On the said analogy it has been observed that in a suit, a claim for relief made by the plaintiff against the defendant involves an investigation directed to the determination of (i) the plaintiff's right to relief; (ii) the corresponding liability of the defendant including whether the defendant is at all liable or not; (iii) the extent of defendant's liability, if any. It has been held that the determination of questions under heads (i) and (ii) are normally regarded as functions of a suit and not as execution proceedings. Therefore, such determinations are normally outside the scope of Section 33C (2). It has further been observed in the said judgment that the calculation or computation of benefit in terms of money follows upon an existing right to the money or benefit, in view of its being previously adjudged or otherwise, duly provided for. According to the learned counsel for the petitioner, since the fact that opposite party no. 1 had worked overtime as has been denied, it could not be decided by the Presiding Officer of the Labour Court whether opposite party no. 1 had done overtime work or not. It may be noted here that it has not been denied on behalf of the petitioner that workman had right to get wages for the overtime work if done by him, that is to say, the existence of a right has not been denied. The claim of opposite party no. 1 has only been denied on the ground that as a fact he had not worked overtime. In my opinion, therefore, the question of determination of right is not involved in

the present case. Only an individual worker has applied for computation of benefit in terms of money. The claim of the petitioner is not dependant upon any prior adjudication as to his right or entitlement to get wages for overtime work as there is no dispute in regard to the entitlement provided a workman has actually done overtime work. It does not require much of probing or detailed investigation into the facts to find out whether the workman had actually done overtime work or not. In the present case although the employer had not made entries about the overtime work done by the petitioner in their records but the same was amply proved on the basis of documentary evidence filed by opposite party no. 1 namely the Attendance Cards issued by the employer bearing endorsement of overtime work done by the opposite party no. 1 under the signatures of officers of the concern. Therefore, on the facts of this case, in my view, the Presiding Officer committed no illegality nor acted beyond his jurisdiction in entertaining the application under Section 33C (2) of the Industrial Disputes Act. The question is whether only admitted claims are to be computed under Section 33C (2) and the jurisdiction can be ousted merely by an assertion by the employer that the workman had not worked. The learned counsel for the opposite party no. 1 has placed reliance upon (AIR 1964 SC Page 743) Central Bank of India v. Raj Gopal a decision by five Judges Constitution Bench of the Hon'ble Supreme Court. In this case it has been held that Section 33C (1) deals with the cases wherein money is due under a settlement or award or under the provisions of Chapter VA. Thus the claim under Section 33C (2) can only be the claim referable to settlement, award or the relevant provisions of Chapter VA but these words of Limitation are not to be found in Section 33C (2) of the Industrial Disputes Act and to that extent the scope of Section 33C (2) is undisputedly wider than that of Section 33C (1). It has further been held that there is no doubt that the three categories of claims mentioned in Section 33C (1) fall under Section 33C (2) and in that sense Section 33C(2) can itself be deemed to be a kind of execution proceedings; but it is possible that claims not based on settlement, awards or made under the provisions of Chapter VA may also be competent under Section 33C (2) and that may illustrate its wider scope. In the end of paragraph 19 Their Lordships of the Supreme Court have further observed. In this connection, we may incidentally state that the observations made by this Court in the case of Punjab National Bank Ltd., (1962) 1 Lab LJ 234 (AIR 1963 SC 487) that Section 33C is a provision in the nature of execution should not be interpreted to mean that the scope of Section 33C (2) is exactly the same as Section 33C (1). Further while dealing with the scope of Section 33C (2) Their Lordships have observed :

The Clause Where any workman is entitled to receive from the employer any benefit does not mean where such workman is admittedly, or admitted to be, entitled to receive such benefit. The Appellant's construction would necessarily introduce the addition of the words admittedly, or admitted to be in that clause, and that clearly is not permissible. Besides, it seems to us that if the appellant's construction is accepted, it would necessarily mean that it would be

at the option of the employer to allow the workman to avail himself of the remedy provided by subsection (2), because he has merely to raise an objection on the ground that the right claimed by the workman is not admitted to oust the jurisdiction of the Labour Court to entertain the workman's application. The claim under Section 33C (2) clearly postulates that the determination of the question about computing the benefit in terms of money may, in some cases, have to be preceded by an enquiry into the existence of the right and such an enquiry must be held to be incidental to the main determination which has been assigned to the Labour Court by SubSection (2). As Maxwell has observed ? Where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution?. We must accordingly hold that Section 33C (2) takes within its purview cases of workmen who claimed that the benefit to which they are entitled should be computed in terms of money, even though the right to the benefit on which their claim is based is disputed by their employers?.

Another case relied upon by the Counsel for the opposite party no. 1 is Kays Construction Co. (Pvt.) Ltd., v. State of U.P. and others. AIR 1965 SC 1488). This is also a decision by the Constitution Bench consisting of five Hon"ble Judges of the Supreme Court, fn this case the scope of Section 6H (1) and (2) of U.P. Industrial Disputes Act which is analogous to Section 33C of the industrial Disputes Act, 1977 and Section 20 of the Industrial Disputes (Appellate Tribunal) Act, 1950 came to be considered. The difference between the money due on one hand and ?benefit? which is not ?money due? but which can become so after the money equivalent is determined on the other, marks out the areas of operation of two subsections. It has further been observed ?The contrast in the two subsections between ?money due? under the first subsection and the necessity of reckoning the benefit in terms of money before the benefit becomes money due under the secondsubsection shows that mere arithmetical calculations of the amount due are not required to be dealt with under the elaborate procedure of the second subsection. Reliance has also been placed by the O. P. No. 1 on a case reported in (AIR 1975 SC 1898) Punjab Cooperative Bank Ltd. v. R.S. Bhatia to show that the scope of subsection (2) of Section 33C is wider. Para 7 of the judgment has been relied upon which reads as follows:

?7. The third submission made on behalf of the appellant that the claim ought to have been entertained by the Government under Section 33G (1) of the Act and it was not maintainable under subsection (2) is stated merely to be rejected. It is completely devoid of substance. In the case of the East India Coal Co. (supra) it has been said at page 9 column 2

?The fact that the words of limitation used in Section 20(2) of the Industrial Disputes (Appellate Tribunal) Act, 1950, are omitted in Section 33C (2) shows that the scope of Section 33C (2) is wider than that of Section 33C (1). Therefore, whereas subsection (1) is confined to claims arising under an award or settlement of Chapter VA, claims which can be entertained under subsection

(2) are not so confined to those under an award, settlement or Chapter VA? The argument put forward on behalf of the appellant against a principle which is firmly established and beyond any doubt or dispute appeared to us an argument in desperation.?

5. In view of the discussion held above and on taking into account the different decisions of the Hon'ble Supreme Court on the question of scope of enquiry under subsection (2) of Section 33C of the Industrial Disputes Act, I am of the view that the Presiding Officer of the Labour Court was within its jurisdiction in entertaining the application under Section 33C(2) of the Industrial Disputes Act. There is no dispute between the parties that there does exist a provision under the law entitling a workman for wages for the overtime work done by him. Merely on denial that the workman has not done overtime work the employer cannot oust the jurisdiction of the Labour Court under Section 33C(2) of the Act. The question whether the workman had done overtime work or not did not require any elaborate or probing enquiry into complicated issues of facts. It was possible for the Labour Court to come to a factual conclusion on merely looking into the records and documentary evidence. The Labour Court has rightly relied upon the Attendance Cards which were issued by the employer in which it was clearly indicated that opposite party no. 1 had worked overtime for certain periods on certain dates. If the entry regarding overtime work was under the signature of the Officers of the Establishment. The enquiry to the extent mentioned above is permissible under subsection (2) of Section 33C of the Industrial Disputes Act. As held by the Hon'ble Supreme Court the purpose of Section 33C(2) is not only to make arithmetical calculations. No other point has been pressed.

6. In the result the writ petition fails. The total amount of benefit computed by the Labour Court in favour of the workman on account of overtime work done by him is only Rs. 779.76 P. Even for this petty amount the petitioner employer considered it fit to drag on the litigation up to this Court and challenged the same by means of the present writ petition. The writ petition is dismissed with costs in favour of opposite party no. which is assessed at Rs. 200.

(Petition dismissed.)