
(1995) 03 SC CK 0096
In the Supreme Court Of India
Case No : SLP (C) No.1666 OF 1989

Cooperative Stores Ltd.

APPELLANT

Vs

K.S. Khurana and Others

RESPONDENT

Date of Decision : 22-03-1995

Acts Referred:

Delhi Shops and Establishments Act, 1954 — Section 16, 17, 18, 21
Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (1996) 2 LLJ 682 : (1996) 7 SCC 441

Hon'ble Judges : A. M. Ahmadii, C.J;S. P. Bharucha, J;K. S. Paripoornan, J

Bench : Full Bench

Final Decision : dismissed

Judgement

A.M. Ahmadi, J.—Special leave granted.

2. In the present case, the notice was confined to the question as to the date from which the respondents-workmen were entitled to payment on account of weekly off-days. Pending notice, this Court directed the appellant to pay 50% of the amount awarded to the workmen within a stipulated time, which we are told has since been done. The short question arises in the following factual background.

3. The respondents-workmen made a grievance that the appellant had not paid the wages in respect of weekly offs to which they were entitled. They, therefore, moved the Labour Court u/s 33-C(2) of the Industrial Disputes Act, 1947. Exercising jurisdiction under that provision, the Labour Court passed an order directing the appellant to pay the amount claimed by the workmen. It is against that order that the appellant preferred a writ petition in the High Court of Delhi which was disposed of by a learned Single Judge of the High Court on merits. The appellant preferred an appeal against the order of the learned Single Judge which was dismissed in limine. It is against the said order that the present appeal is filed. As stated earlier when the matter came up for admission, notice was issued on the limited question stated hereinbefore.

4. We have heard learned Counsel on that limited question. The learned Counsel for the appellant tried to contend that the Labour Court had no jurisdiction to entertain any application u/s 33-C(2) of the Industrial Disputes Act and that as such a claim could only be made u/s 21 of the Delhi Shops and Establishments Act, 1954. He desired us to go into this question, but having regard to the fact that the notice was issued on a limited point we have refrained from going into that larger question.

5. On the limited question, learned Counsel for the appellant once again invited our attention to Sections 18 and 21 of the Delhi Act and argued that having regard to the period of limitation prescribed under the latter provision, the Labour Court ought not to have directed the pay ment for a period exceeding one year. He submitted that even while exercising jurisdiction u/s 33-(C)(2) of the Industrial Disputes Act, the Labour Court ought to have kept in view the period of limitation prescribed u/s 21 of the Delhi Act. It must, however, be remembered that the proviso to Section 21 lays down that if the application is filed after the period of limitation and the applicant satisfies the authority that he had sufficient cause for not making the application within the prescribed period the authority may condone the delay and admit the application. Therefore, ultimately, the question would be whether in the facts and circumstances of the case that delay beyond the period of one year deserved to be excused. That being so, the question would have to be decided in the facts and circumstances of each case and no hard and fast rule can be laid down in that behalf. Therefore, even if we assume, as we do for the purposes of this case, that the provision in Section 21 of the Delhi Act has relevance,-the question would have to be decided by the Court in the facts and circumstances of each case. We are, therefore, unable to agree with the view that no claim beyond the period of one year can be entertained. But at the same time we do see force in the submission of Mr. Thakur that if the claim is entertained after gross delay it would cause considerable hardship to the employer, in that the employer would have destroyed the records because it cannot be expected to preserve the records for years on end. That would be a circumstance which would have to be borne in mind while deciding on the question as to the period from which the authority would like to allow the claim. Section 18 of the Delhi Act in turn states that no deduction shall be made from the wages of any employee on account of the closed day u/s 16 or a holiday granted u/s 17 of that Act. Therefore, if a deduction is made in violation of that provision or payment is withheld in violation of the spirit of that provision that would be a factor which would have to be considered assuming that the Delhi Act applies. Therefore, in any event it is not possible to lay down any hard and fast rule because the decision would have to depend on the fact-situation obtaining in each case.

6. In view of the above, we are of the opinion that if the Labour Court in the instant case awarded the amount from the dates when the payment was withheld, we do not see any reason why we should interfere because the question is largely one of facts of each case. We, therefore, dismiss this appeal,

but make no order as to costs. The remaining 50% may be paid within three months.