

(1996) 02 BOM CK 0021

In the Bombay High Court

Case No : Writ Petition No's. 2547 and 2551 to 2598 of 1994

Deputy Engineer, Zilla Parishad, Umred and Others

APPELLANT

Vs

Shantaram Ramaji and Others

RESPONDENT

Date of Decision : 13-02-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 48, 9
COMPANIES ACT, 1956 — Section 33
Industrial Disputes Act, 1947 — Section 10, 11, 7A
Limitation Act, 1963 — Section 2
Payment of Wages Act, 1936 — Section 15, 25F

Citation : (1996) 5 BomCR 504 : (1997) 2 LLJ 262 : (1996) 2 MhLj 116

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Judgement

1. The group of these 49 writ petitions arise out of 49 separate orders passed by the 3rd Labour Court, Nagpur, on November 22, 1993, whereby the 3rd Labour Court has allowed 49 applications filed by about 400 employees u/s 33-C(2) of the Industrial Disputes Act, 1947. Since common arguments have been advanced by the learned counsel for the parties, though the orders are different, these 49 writ petitions have been heard together and are disposed of by this common judgment.

2. The respondents in all the 49 writ petitions filed 49 separate applications before the 3rd Labour Court, Nagpur, u/s 33-C(2) of the Industrial Disputes Act, 1947 (for short, "the Act"), claiming difference of wages in accordance with the Kalekar Award for the period from 1968 to 1976. Some applications were filed on April 8, 1979 and remaining applications were filed on April 11 1979. The said applications were contested by the petitioners (for short, "the employer") by filing written statement. Various pleas were set out in the written statement including that the application filed by 21 the employees was time barred; that Kalekar Award was not applicable; that the employees have been paid the entire wages payable to them and no amount was outstanding and therefore the

applications u/s 33-C(2) were not maintainable. It would be pertinent to note that the employees, though filed 49 separate applications, which related to difference of wages for about 400 employees, at the time of recording the evidence the employees filed a pursis before the 3rd Labour Court vide Ex. 26 that the evidence in the application (IDA) No. 376/79 be read as evidence in all the 49 applications. Similar pursis was filed by the employer before the 3rd Labour Court, Nagpur, that the evidence led by them in the application (IDA) No. 376/79 be read as evidence on their behalf in all the applications. The 3rd Labour Court recorded the evidence tendered by the parties and by the order dated December 4, 1985 allowed all the 49 applications filed by the employees u/s 33-C(2) of the Act. The order passed by the 3rd Labour Court on December 4, 1985 allowing the claim of the employees was challenged by the present petitioners before this Court by filing writ petition and this Court by the order dated February 20, 1990 without going into the merits of the claim of the parties, set aside the order passed by the 3rd Labour Court and remanded the matter back to the 3rd Labour Court, Nagpur, by directing that the said Court should hold fresh enquiry by permitting the parties to lead fresh evidence and then decide the applications afresh in accordance with law. After remand, the employer made an application seeking amendment in the written statement which was allowed and also produced large number of documents. It appears from the record that the employer also after production of various documents served upon a notice to the employees to admit the documents. The parties led fresh evidence by examining few witnesses and thereafter by the separate orders dated November 22, 1993, the 3rd Labour Court allowed the applications filed by the employees directing the employer to pay the amount mentioned in each of the order.

3. Though the 3rd Labour Court has passed separate orders in all the 49 applications, the reasons in all the orders are almost identical and except the difference of the amount payable to various employees, no other material difference is found in any of the orders passed by the 3rd Labour Court.

4. Assailing the orders passed by the Labour Court, Mr. Mohokar, learned counsel for the petitioners, contends that admittedly the claim of difference of wages related to the period from 1968 to 1976 in all the 49 applications and admittedly the applications were made in the month of April 1979 and, therefore, all the applications were time barred. In the alternative, Mr. Mohokar contends that assuming that Law of Limitation was not applicable, the applicants were required to make the applications in reasonable time but, as it appears, the difference of wages for the period from 1968 to 1976 has been claimed for the first time by making applications in the year 1979 and, therefore, apparently, the claim of the employees had become stale and this aspect was not at all considered by the Labour Court. Mr. Mohokar also contends that while disposing of all the 49 applications u/s 33-C(2) the 3rd Labour Court has passed the orders mechanically without proper application of mind and without computation of the amount due. To bring home his argument, the learned counsel for the petitioners referred to the orders passed by the 3rd Labour Court and pointed out that there

was no specific computation in each case though the Labour Court itself has observed in para 6 of each of the order that each claim would have to be decided taking into consideration the tenure of service, the admission and denial of employment of applicants and the different payments made to the employees etc. The learned counsel for the employer would also urge that the 3rd Labour Court seriously erred in refusing to grant time to the employer to place on record the original muster rolls which were possessed by the Finance Department. Thus Mr. Mohokar contended that the order passed by the 3rd Labour Court impugned in this writ petition deserves to be set aside.

5. Per contra, the learned counsel, Mr. M. P. M. Pillai, for the employees contended that Limitation Act has no application to the proceedings u/s 33-C(2) of the Act and, therefore, when there was no limitation prescribed, the Labour Court did not commit any error in entertaining the applications and allowing the same. In support of his contention, Mr. Pillai relied upon the decision of the Apex Court in the case of Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., and on the Full Bench decision of Andhra Pradesh High Court in the case between Nalgonda Co-op. Marketing Society Ltd. Vs. Labour Court and Others, . Mr. Pillai also submitted that enough opportunity was given to the employer to produce the original muster rolls but despite the opportunity granted, the employer did not produce the original muster rolls and therefore the Labour Court did not commit any error in relying on the evidence led by the employees and in allowing the applications. In the alternative, Mr. Pillai submitted that in case the Court holds that the claim made by the employees was stale, the employees should be given opportunity to explain before the 3rd Labour Court, the reasons which led in making the applications belatedly and for that purpose the matter may be remanded back to the 3rd Labour Court, Nagpur.

6. I have considered the rival contentions raised by the learned counsel for the parties and perused the available record and the impugned orders with the assistance of the learned counsel for the parties. Looking to the controversy raised during the course of arguments, the facts of each case need not be referred to nor they are required to be looked into in detail. Suffice it to observe that the claim of the employees relates to the difference of wages which, according to the employees, they are entitled to under the Kalekar Award for the period from 1968 to 1976. It would be seen that out of the 49 cases filed before the Labour Court, in 13 matters the difference of wages relates to the period from April 1, 1968 to February 28, 1974, in 8 cases the difference of wages relates to the period from April 1, 1968 to February 28, 1975 and in some of the cases the wage difference relates to the period so from 1973 to 1976. Thus, there is no dispute that in all the 49 applications filed by the 400 employees, the difference of wages relates to s the period ranging from 1968 to 1976. Admittedly, some of the applications were made on April 8, 1979 and the remaining applications were made on April 11, 1979. Before the Labour Court, the defence set out by the employer after amending the written statement was

that even otherwise for applications u/s 33-C(2), the limitation of three years would be applicable and the applications were time barred as they were made after a period of three years and liable to be dismissed as such. On the basis of the plea set out by the employer in the written statement, the Labour Court struck out the issue to the effect in all the 49 cases, whether the application u/s 33-C(2) of the Act was barred by limitation. The finding by the Labour Court was in negative since it held that no limitation is prescribed for application u/s 33-C(2) of the Act and in support of its finding the Labour Court relied on the decision of the Apex Court in the case of Municipal Council, Athani, (cited supra). The Labour Court decided the issue of limitation thus :

"So far as limitation is concerned it is not disputed that under Industrial Disputes Act no limitation is prescribed under any provision. It is the argument advanced by the learned counsel Shri Madhkolkar for the Zilla Parishad that since Section 33-C(2) of I.D. Act does not prescribe any limitation the residuary clause of limitation will be applicable and the limitation would be of a period of three years only. He referred certain case law in his written argument. However, going through the same and finding that specifically there is no provision under I.D. Act for prescribing the limitation or for applicability of the provisions of the Limitation Act to this proceeding. Relying upon the case of Athani Municipal Council v. Labour Court (supra) held those cases do not apply to the application u/s 33-C(2) of the I.D. Act and this application is tenable under law".

7. In *Inder Singh and Sons Ltd. v. Their Workmen*, 1961 II LLJ 89 the Apex Court held that though Law of Limitation which might bar any Civil Court from giving remedy in respect of lawful rights are not and should not be applied by the Industrial Tribunals, yet it was well- accepted principle of industrial adjudication that over-stale claims should not generally be encouraged or allowed, unless there was satisfactory explanation for the delay. The Apex Court in *Inder Singh's* case, cited supra, held as under at p 92 :

"This brings us to the question whether the Tribunal is right in allowing payment for extra wages for load from January 1, 1952 to October 9, 1954 and for extra wages for drilling holes from the beginning of 1950. It is not disputed before us that no claim for extra wages for load under Cl. (5) of the award was made prior to October 10, 1954, and as regards extra wages for boring holes, before February 1953. It is urged, however, on behalf of the workmen that once it is found, as the Tribunal has found, that the employer was in law liable to pay extra wages for load from January 1, 1952 and extra wages for drilling holes from October 1950, the fact that the demand was made much later does not affect the employer's liability. It is true that laws of limitation which might bar any civil Court from giving remedy in respect of lawful rights are not and should not be applied by the Industrial Tribunals. On the other hand it is a well accepted principle of industrial adjudication that over-stale claims should not generally be encouraged or allowed, unless there is a satisfactory explanation for the delay. Apart from the obvious risk to industrial peace from the entertainment of claims

after a long lapse of time, it is necessary also to take into account the unsettling effect this is likely to have on the employer's financial arrangements. Whether a claim has become too stale or not will depend on the circumstances of each case. In *Jharkhand Collieries Ltd. v. Central Government Industrial Tribunal* 1960 II LLJ 71 where a claim for extra wages under Cl. (2) of this very Korea award came up for consideration this Court held that it would not be fair or just to allow the workmen the benefit of an increase directed by the award even prior to the date of demand. A similar view was taken in this Court's judgment in *United Collieries, Ltd. v. Its Workmen* 1961 II LLJ 75 (supra). While these cases do not lay down an absolute proposition as suggested on behalf of the respondent that relief can in no case be granted for a period prior to the demand they do strongly support the proposition that in deciding on the date from which the relief should be given the industrial tribunal ought to pay particular attention to the date when the demand was first made. Taking into account the dates of demand in the present case, along with the other circumstances of the case, we are of the opinion that the Tribunal was not justified in ordering the grant of extra wages for load with effect from January 1, 1952, and for boring holes with effect from 1950. On a consideration of all the circumstances of the case we have come to the conclusion that both these reliefs should be granted with effect from January 1953. Sri Sanyal has fairly conceded that this would be a fair and just order to make".

7A. The aforesaid case of *Inder Singh* came up for consideration before this Court in the case of *Ramkrishna Ramnath Bidi Manufacturing, Kamptee v. Labour Court, Nagpur* 1963 1 LLJ 417 and the Division Bench of this Court after considering the scheme of the Industrial Disputes Act, particularly the provisions contained in Sections 7A, 10, 11, 25F, 33-C(1) and 33-C(2), and with reference to Section 9 of CPC and Law of Limitation held as under at P. 427 :

"In this context, even the wording of Section 33-C(2) may be noted, any benefit may be determined by the Labour Court and the amount so determined may be recovered as provided for in sub-section (1). It is contended that the word "may" in this context meant "shall". It is also well established that in the Statute which authorise persons to do acts for the benefit of others, or, as it is sometimes said, for the public good or the advancement of justice, the word "may" means "shall". But it is worthy of note that whereas, in sub-section (1), the word "shall" has been used, requiring the appropriate Govt. to issue a Certificate for the unpaid amount, in sub-section (2) that word is not used. This, it is contended for the petitioner, must have been deliberately done with a view to invest the Labour Court in the discharge of its various functions which were formerly discharged by the Industrial tribunals with certain amount of discretion in computing and awarding claims. However that might be, there can hardly be any doubt that the Labour Court while doing functions u/s 33-C(2) is as much governed by the general principles of industrial adjudication as an industrial tribunal and since these principles discourage over-stale and delayed claims being entertained, the labour court functioning under sub-section (2) will have the power not to

entertain such claims, although no law of limitation applied to it.

Reference may be made in this connection to Section 15 of the Payment of Wages Act already referred to. No doubt, that Section says that the claim has to be preferred within six months, but there is a further proviso which says that if there is delay, the authority will decide whether it is an unreasonable delay. Industrial disputes are required to be settled as early as possible. Therefore, undue delay or laches would not be countenanced by the Labour Court. Whether there has been an unreasonable delay is a question to be decided by the Labour Court in its discretion. All that we need say now is that the labour court functioning u/s 33-C(2), though not governed by the laws of limitation which might bar a civil Court from giving relief in respect of a lawful right, will be entitled not to encourage or allow over- stale claims unless there is a satisfactory explanation for the delay.

In this case, Respondent No. 1 has proceeded on the footing that the law of limitation does not apply and, therefore, it is not prevented from entertaining the claim. In view of the opinion expressed above, Respondent 1 will have to consider whether there has been an unreasonable delay in making the claim and if so, a reasonable explanation has been offered and then proceed to determine the matter on merits".

8. In Town Municipal Council case, cited supra, the Supreme Court held that Article 137 of the Schedule to the Limitation Act, 1963 does not apply to applications u/s 33-C(2) of the Industrial Disputes Act and no limitation is prescribed for such applications. While holding that Article 137 of the schedule to the Limitation Act does not apply to the applications u/s 33-C(2) of the Industrial Disputes Act, the Apex Court observed that though the amendments made in the Limitation Act of 1963 enlarge the scope of third division of the schedule so also to include some applications presented to the Court governed by the Code of Civil Procedure, the fact remains that the applications must be to the Courts to be governed by the Articles in this division and the scope of various Articles in this division cannot be held to be so enlarged as to include within them applications to bodies other than Courts, such as quasi-judicial Tribunal, or even an executive authority. An Industrial Court or Labour Court dealing with the applications or references under the Act were not Courts and in no way were governed either by the CPC or the Code of Criminal Procedure. The Apex Court held as under at pp 659-660 :

"In dealing with the second question relating to the applicability of Article 137 of the schedule to the Limitation Act, 1963 to applications u/s 33-C(2) of the Act, we may first take notice of two decisions of this Court on the scope of the parallel provision contained in Article 181 of the First Schedule to the Indian Limitation Act No. 9 of 1908. Article 181 of that Schedule laid down that the period of limitation for an application, for which no period of limitation was provided elsewhere in the schedule or by Section 48 of the Code Of Civil Procedure, 1908, would be three years, and the time from which the period would begin to run

would be when the right to apply accrued. The scope of this Article was considered first by this Court in *Sha Mulchand and Co. Ltd. (In Liquidation) Vs. Jawahar Mills Ltd.*, where the Court had to consider the question whether this Article would govern an application made by the Official Receiver u/s 33 of the Indian Companies Act for rectification of the register of a limited company. The court noted the fact that the Advocate appearing in the case relied strongly on Article 181 of the Limitation Act and, thereafter, took notice of the fact that the Article had, in a long series of decisions of most, if not all, of the High Courts, been held to govern only applications under the Code of Civil Procedure. The Court also dealt with the argument advanced that the reason for holding that Article 181 was confined to applications under the Code was that the article should be construed *ejusdem generis* and that, as all the articles in the third division of the schedule to the Limitation Act related to applications under the Code, Article 181, which was the residuary Article, must be limited to applications under the Code. That reasoning, it was pointed out, was no longer as applicable because of the amendment of the Limitation Act by the introduction of Articles 158 and 178 which governed applications under the Arbitration Act and not thus under the Code."

The Court then considered the views expressed by the various High Courts in a number of cases and held :-

"It does not appear to us quite convincing, without further argument, that the mere amendment of Articles 158 and 178 can ipso facts alter the meaning which is a result of a long series of judicial decisions of the different High Courts in India, came to be attached to the language used in Article 181. This long catena of decisions may well be said to have, as it were, added the words "under the Code" in the first column of that article. If those words had actually been used in that column, then a subsequent amendment of Articles 158 and 178 certainly would not have affected the meaning of that Article. If, however, as a result of judicial construction, those words have come to be read into the first column as if those words actually occurred therein, we are not of opinion, as at present advised, that the subsequent amendment of Articles 158 and 178 must necessarily and automatically have the effect of altering the long acquired meaning of Article 181 on the sole and simple ground that after the amendment the reason on which the old construction was founded is no longer available".

It appears to us that the view expressed by this Court in those cases must be held to be applicable, even when considering the scope and applicability of Article 137 in the new Limitation Act of 1963. The language of Article 137 is only slightly different from that of the earlier Article 181 inasmuch as, when prescribing the three years" period of limitation. The first column giving the description of the application reads as "any other application for which no period of limitation is provided elsewhere in this division". In fact, the addition of the word "other" between the words "any" and "application" would indicate that the legislatures wanted to make it clear that the principle of interpretation of Article 181 on the

basis of *ejusdem generis* should be applied when interpreting the new Article 137. This word "other" implies a reference to earlier Articles, and, consequently, in interpreting this article, regard must be had to the provisions contained in all the earlier Articles. The other Articles in the third division to the schedule refer to applications under the Code of Civil Procedure, with the exception of applications under the Arbitration Act and also in two case, applications under the Code of Criminal Procedure. The effect of introduction in the third division of the schedule of reference to applications under the Arbitration Act in the old Limitation Act has already been considered by this Court in the case of *Sha Mulchand and Co. Ltd.*, (*supra*). We think that, on the same principle, it must be held that even the further alteration made in the Articles contained in the third division of the schedule to the new Limitation Act containing references to applications under the Code of Criminal Procedure cannot be held to have materially altered the scope of the residuary, Article 137 which deals with other applications. It is not possible to hold that the intention of the legislature was to drastically alter the scope of this Article so as to include within it all applications, irrespective of the fact whether they had any reference to the Code of Civil Procedure.

This point, in our opinion, may be looked at from another angle also. When this Court earlier held that all the Articles in the third division to the schedule, including Article 181 of the Limitation Act of 1908 governed applications under the CPC only, it clearly implied that the applications must be presented to a Court governed by the Code of Civil Procedure. Even the applications under the Arbitration Act that were included within the third division by amendment of Articles 158 and 178 were to be presented to Courts whose proceedings were governed by the Code of Civil Procedure. At best the further amendment now made enlarges the scope of the third division of the schedule so as also to include some applications presented to Courts governed by Code of Criminal Procedure. One factor at least remains constant and that is that the applications must be to Courts to be governed by the Articles in this division. The scope of the various Articles in this division cannot be held to have been so enlarged as to include within them applications to bodies other than Courts, such as a quasi-judicial Tribunal, or even an executive authority. An Industrial Tribunal or a Labour Court dealing with applications or references under the Act are not Courts and they are in no way governed either by the CPC or the Code of Criminal Procedure. We cannot therefore, accept the submission made that this Article will apply even to applications made to an Industrial Tribunal or a Labour Court. The alterations made in the Article and in the new Act cannot, in our opinion, justify the interpretation that. even applications presented to bodies, other than Courts, are now to be governed for purposes of limitation by Article 137.

Reliance in this connection was placed by the learned counsel for the appellant primarily on the decision of the Bombay High Court in *Manager, M/s. P. K. Porwal v. Labour Court at Nagpur* 1968 M.L.J. 1. We are unable to agree with the view taken by the Bombay High Court in that case. The High Court ignored the circumstance that the provisions of Article 137 were sought to be applied to an

application which was presented not to a Court but to a Labour Court dealing with an application u/s 33-C(2) of the Act and that such a Labour Court is not governed by any procedural Code relating to civil or criminal proceedings. That Court appears to have been considerably impressed by the fact that in the new Limitation Act of 1963, an alteration was made in the long title which has been incorrectly described by that Court as preamble. Under the old Limitation Act, no doubt, the long title was "An Act to consolidate and amend the law for the limitation of suits and for other purposes", while, in the new Act of 1963, the long title is "An Act to consolidate and amend the law for the limitation of suits and other proceedings and for purposes connected therewith". In the long title, thus, the words "other proceedings " have been added, but we do not think that this addition necessarily implies that the Limitation Act is intended to govern proceedings before any authority, whether executive or quasi-judicial when, earlier, the old Act was intended to govern proceedings before civil Courts only. It is also true that the preamble which existed in the old Limitation Act of 1908 has been omitted in the new Act of 1963. The omission of the preamble does not, however, indicate that, there was any intention of the legislature to change the purposes for which the Limitation Act has been enforced. The Bombay High Court also attached importance to the circumstance that the scope of the new Limitation Act has been enlarged by changing the definitions of "applicant" in Section 2(a) of the new Act so as to include even a petitioner and the word "application" so as to include a petition. The question still remains whether this alteration can be held to be intended to cover petitions by a petitioner to authorities other than Courts. We are unable to find any provision in the new Limitation Act which would justify holding that these changes in definition were intended to make the Limitation Act applicable to proceedings before bodies other than Courts. We have already taken notice of the change introduced in the third division of the schedule by including references to applications under the Code of Criminal Procedure, which was the only other aspect relied upon by the Bombay High Court in support of its view that applications u/s 33-C of the Act will also be governed by the new Article 137. For the reasons we have indicated earlier, we are unable to accept the view expressed by the Bombay High Court, and we hold that Article 137 of the Schedule to the Limitation Act, 1963 does not apply to applications u/s 33-C(2) of the Act, so that the previous decision of this Court that no limitation is prescribed for such applications remains unaffected".

9. The judgment of the Apex Court in the Town Municipal Council's case (supra) came up for consideration before the Apex Court subsequently and it would be advantageous to note that in The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma, the Supreme Court observed that the correctness of the two Judges Bench Judgment of the Court in Town Municipal Council's case was doubted in Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others, and then it held that Article 137 of the Limitation Act, 1963 would apply to any petition or application filed under any Act and not confined to applications under CPC in Civil Court and thus the three judges Bench of the

Apex Court in the Kerala State Electricity Board case (supra) differed from the earlier view taken by the two Judges Bench in Town Municipal Council's case (supra).

10. The question remains and what is required to be seen is whether the three Judges Bench decision of the Apex Court in the Kerala State Electricity Board case (supra) overrules completely the judgment of the Apex Court delivered in Town Municipal Council's case (supra) or that it has only been overruled to some extent. A close reading of the observations made by the Apex Court in Kerala State Electricity Board case (supra) would show that the Court was construing the expression, "any other application" under Article 137 and observed that the interpretation which was given to Article 181 of the Limitation Act, 1908 on the principle of ejusdem generis was not applicable with regard to the Limitation Act of 1963. The Supreme Court held in the above cited case of Kerala Electricity Board that Article 137 of Limitation Act, 1963 stood in isolation from all other Articles in Part I of the third division and the petitions and applications even made under Special Act to the Civil Court would be covered under Article 137. The Supreme Court in paras 21 and 22 in the Kerala State Electricity Board case (cited supra) held as under :

"21. The changed definition of the words "applicant" and "application" contained in Sections 2(a) and 2(b) of the 1963 Limitation Act indicates the object of the Limitation Act to include petitions, original or otherwise, under special laws. The interpretation which was given to Article 181 of the 1908 Limitation Act on the principle of ejusdem generis is not applicable with regard to Article 137 of the 1963 Limitation Act. Article 137 stands in isolation from all other Articles in Part-I of the third division. This Court in Nityananda Joshi's case (supra) where this Court construed Article 137 to be referable to applications under the Civil Procedure Code. Article 137 includes petitions within the word "applications". These petitions and applications can be under any special Act as in the present case.

22. The conclusion we reach is that Article 137 of the 1963 Limitation Act will apply to any petition or application filed under any Act to a civil Court. With respect, we differ from the view taken by the two Judge Bench of this Court in Athani Municipal case, (supra) and hold that Article 137 of the 1963 Limitation Act is not confined to applications contemplated by or under the Code of Civil Procedure. The petition in the present case was to the District Judge as a Court. The petition was one contemplated by the Telegraph Act for Judicial decision. The petition is an application falling within the scope of Article 137 of the 1963 Limitation Act.

For the foregoing reasons we accept the appeal and set aside the judgment of the High Court".

It would be seen that though the three Judges Bench of the Apex Court in Kerala State Electricity Board case (supra) has differed from the view taken by the two

Judges Bench decision of the Apex Court in Town Municipal Council case (supra), that difference of view only related to the applications or petitions filed under the Special Act before the Civil Court. In Kerala State Electricity Board case (supra) the Apex Court has not held that Article 137 would be attracted to the applications or petitions which are not filed before civil Court. There is no manner of doubt that the Labour Court functioning under the Industrial Disputes Act is not the civil court and, therefore, so far as ratio of the Apex Court in Town Municipal Council case (supra) relating to Labour Court or Industrial Court is concerned, that would be applicable. It can there be safely held that Article 137 of Limitation Act, 1963 does not govern the applications filed u/s 33-C(2) of the Act.

11. The matter, however, does not end here. The next question would be, even though there is no limitation prescribed in filing the application or making the claim u/s 33-C(2), whether any claim made after a long lapse of time or the claim which has become stale or over-stale could be entertained, As already observed, in Indersingh's case (supra) the Apex Court has held that the principle of Industrial adjudication demands that over-stale case should not be encouraged or allowed unless there was satisfactory explanation for the delay. The reason is obvious that by entertaining the stale claim without explaining the delay, after a long lapse of time, any order passed entertaining such claim may affect the financial position so and arrangement of the employer and thus right of the employer may be seriously prejudiced. Whether a claim is stale or not and whether the claimant has furnished satisfactory explanation in making delayed claim is always a question depending on the facts of each case and no hard and fast rule can be laid down nor any absolute proposition framed as to when an application or claim u/s 33-C(2) would be treated stale or belated or in what circumstances the Labour Court would entertain such claim or hold the explanation reasonable. Each case would turn on its own facts and has to be examined on the basis of the facts obtaining therein and the Labour Court or the Industrial Court in the facts and circumstances of the case before it has to reach the conclusion whether the facts warrant entertainment of delayed or belated claim or not. The legal position has been well pro- pounded by the Apex Court in Indersingh's case (supra) and followed by the Division Bench of this Court in Ramkrishna Ramnath Bidi Manufacturing case (supra). The discussion made by the Labour Court which has already been quoted above, while deciding the issue on limitation, would show that the Labour Court has proceeded on the footing that the law of limitation was not applicable to the applications u/s 33-C(2) and, therefore, the claim was not barred by limitation. To that extent Labour Court was right but the Labour Court did not apply its mind at all as to whether the claim of difference of wages for the period from 1968 to 1976 made in the year 1979 suffered from unexplained delay and whether the said claim was stale. Mr. Pillai, learned counsel for the employees, during the course of arguments has already submitted in the alternative that an opportunity should be granted to the employees to explain before the Labour Court that the claim was not stale and

there was sufficient reason not making the claim of difference of wages immediately when it became due. Mr. Mohokar, learned counsel for the employer, though initially submitted that there is not even a whisper in any of the applications filed by the claimants explaining the delay in making the claim and therefore this Court should examine the effect of non- explanation of delay, but later on submitted that since the voluminous evidence led by the employer has also not been considered by the Labour Court and that the applications have been disposed of mechanically by the Labour Court without proper application of mind and without computing of wages due in each of the case, he has no objection if the matters are remanded back to the Labour Court for fresh decision in accordance with law.

12. The subject matter of the dispute in the applications u/s 33-C(2) of the Act relates to the difference of wages for the period from 1968 to 1976, and for almost for two decades the matter is hanging fire and it indeed is painful to remand the matter back to the Labour Court, but in view of the submissions made by the learned counsel for the parties and the discussion made hereinabove there is no escape except to send the matter back to the Labour Court.

13. No further discussion on merits or on the other arguments raised by the learned counsel for the parties be made else it may prejudice the merits of the case since the matter deserves to be remanded back for fresh disposal of the applications u/s 33-C(2) of the Act in accordance with law.

14. In view of the aforesaid discussion, all these 49 writ petitions are partly allowed. The impugned orders passed by the 3rd Labour Court, Nagpur, on November 22, 1993 are quashed and set aside and the said Court is directed to hear and decide all the 49 Applications afresh in accordance with law. The said Labour Court may permit the employees/applicants to lead evidence explaining the delay. The Labour Court may permit applicants to make independent applications explaining the delay in filing the applications u/s 33-C(2) of the Act and also permit the applicants to lead evidence in support of the averments made in such applications. It would be open to the employer to lead evidence in rebuttal and also to prove the documents which are already filed by the employer before the Labour Court and to produce original muster rolls and record. Since the matter is very old, it is expected of the Labour Court to expeditiously dispose of the applications. The Registry is directed to send back the records to the 3rd Labour Court, Nagpur, forthwith. Rule is made absolute in aforesaid terms. No costs.