

(2011) 02 BOM CK 0012
In the Bombay High Court
Case No : Writ Petition No. 396 of 2011

Linesh Chandrakant Satope	Vs	APPELLANT
Golden Liquor Agencies, Mumbai		RESPONDENT

Date of Decision : 01-02-2011

Acts Referred:

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

Citation : (2011) 3 LLJ 701

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : V.P. Vaidya, for the Appellant; Rajesh Gehani, for the Respondent

Judgement

Ms. Nishita Mhatre, J.—This Writ Petition has been preferred against the order passed by the Labour Court, Mumbai on October 8, 2010 in Application (IDA) No. 163/2009. By this order, the request for production of certain documents, which the petitioner had sought from the respondent-Company, has been disallowed. The petitioner has filed an application u/s 33C(2) of the Industrial Disputes Act, 1947, claiming the salary for the month of 2007, Travelling Allowance and Bonus for the year 2006-2007, Commission for the period April, 2004 to August, 2007 and Incentives for the period May, 2005 to June, 2005 and October, 2006, besides overtime. The documents which the petitioner sought were (i) Registration Certificate under the Bombay Shops and Establishments Act, 1948; (ii) Muster Roll cum Wage Register for the period from 1997 to 2007; (iii) Register of Employment for Leave Book; (iv) Register of Bonus; (v) Register showing the details of payments made towards incentives and commissions; and (vi) Partnership Deed registered with the Registrar of Partnership.

2. A reply was filed by the respondent-Company contending that these documents need not be produced because they are not relevant.

3. The Labour Court has disallowed the application. It has held that the burden of proof lies on the petitioner which he must discharge by leading cogent and

convincing evidence. He cannot take the "assistance of his adversary" to prove his case, observed the Labour Court. The Labour Court has therefore concluded that making of an application for production of document was not permissible as it would amount to a fishing and roving enquiry.

4. In my opinion, these observations of the Labour Court are incorrect. There are several ways in which a party who is required to prove a particular fact can do so. He may lead oral evidence to prove that fact. Eliciting favourable answers while cross examining a witness would also aid in discharging this burden. He may rely on documents, if necessary, to substantiate his claim. He may also call for production of those documents, if those documents are maintained by the employer in his regular course of business. The workman would be entitled to prove his case by placing reliance on these documents, once they are produced. This is not "assistance from an adversary". It is always open for a party to call upon his adversary to produce such documents as are necessary to prove his own case provided that he demonstrates the relevance of those documents.

5. In the present case, unfortunately, the Labour Court has not considered the request for production of documents in this light.

6. The Registration Certificate issued under the Bombay Shops and Establishment Act, 1948, has been sought by the petitioner in order to prove that the respondent-Company employs more than 20 workmen, one of the requisites for the liability to pay bonus. In my opinion, this register is not required since it is the case of the respondent-Company that though the petitioner-workman is entitled to bonus, he has not been paid the same for certain reasons. Thus, in my opinion, the entitlement of bonus is not disputed. The issue is only whether the petitioner-workman should be paid the amount for the relevant period. Therefore, the Registration Certificate issued under the Bombay Shops and Establishment Act, 1948, and the Register of Bonus are not relevant.

7. As regards the Register of Employment for Leave Book, in my opinion, this document is also not necessary as undoubtedly the establishment is covered by the Bombay Shops and Establishment Act, 1948 and the leave would be payable under that Act. Therefore, this Register is not relevant.

8. As regards the Partnership Deed, Mr. Vaidya, the learned Advocate appearing for the petitioner, submits that the petitioner does not insist on the production of this document.

9. The Muster Roll-cum-Wage Registers for the period from 1997 to 2007 are relevant in view of the fact that the hours of work for which the workman was employed on each day are noted in these Registers. The petitioner-workman has claimed overtime wages in his application and, therefore, this document would be relevant and must be produced.

10. The Register showing the incentives and commissions would also be relevant. This is because it would be necessary to ascertain whether the petitioner has

been paid the correct amount as incentives and commission. This Register would be the best document to establish this fact. Therefore, this document must also be produced.

11. Accordingly, the impugned order dated October 8, 2010 passed by the Labour Court, Mumbai in Application (IDA) No. 163/2009 is set aside.

12. The Application (IDA) No. 163/2009 is remanded to the Labour Court, Mumbai for hearing afresh.

13. The respondent-Company is directed to produce Muster Roll-cum-Wage Register for the period from 1997 to 2007 and the Register showing the details of payments made towards incentives and commissions.

14. According to the respondent-Company, it does not have the muster rolls and the wage registers for the period requested as they are destroyed. In case the respondent-Company does not produce the Registers, as directed, it is for the Labour Court to draw the necessary inference after considering the reasons for non-production of these documents.

15. The writ petition is disposed of with the aforesaid directions.