

(2000) 04 BOM CK 0062

In the Bombay High Court

Case No : Writ Petition No. 5407 of 1994

Maresh Pokardas

APPELLANT

Vs

Umashankar Mangal Prasad and another

RESPONDENT

Date of Decision : 10-04-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(s), 25F, 25FF, 33C, 33C(2)

Citation : (2000) 3 ALLMR 754 : (2000) 4 BomCR 63 : (2000) 2 BOMLR 815 :
(2000) 87 FLR 807 : (2000) 4 MhLj 80

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : R.J. Todankar, for the Appellant;

Judgement

R.J. Kochar, J.—The petitioner has challenged the judgment and order dated 7th June 1994 passed by the first Labour Court, Thane in Application IDA No. 172 of 1983 filed by an employee against one Shri Pokhardas, the Proprietor of Tekson Textiles, Bhivandi to claim the following benefits.

1. Notice Pay 30 days Rs. 4,800.00
2. Closure compensation 60 days Rs. 9,600.00
3. Leave Wages (2 years) 42 days Rs. 6,720.00
4. Bonus (4 years) Rs. 16,000.00
5. Overtime Wages (Rs. 13 per hour) Rs. 64,896.00

Total Rs. 1,02,016.00

It was the case of the employee that he was working with the petitioner employer as Warper for 4 years at Rs. 4,000/- per month as his wages. The employee has alleged that he was working for 12 hours a day or more. It is further averred that the factory was closed with effect from 1-8-1992 without paying closure compensation, notice pay and other dues such as leave wages,

bonus and over-time wages. This application filed on behalf of the employee is classically vague and it does not disclose any particulars or details about the claims and the basis on which the employee has prayed for the relief's. Even if it is an application on behalf of poor workman, the union under whose care the said application has been forwarded, ought to have taken a little care to give some basis and some more details and particulars about the claim of the employee. Apart from giving the figures and the nature of the claim a total of Rs. 1,02,016/- is prayed for. I fail to understand on what basis the application has been filed for the claims as no details have been given therein. Relevant dates or years for the closure compensation or leave wages or bonus as also details for overtime done by him except saying that he was working for more than 12 hours a day have not been given in the said application. Though strictly the law of pleadings may not be applicable to the labour proceedings some reasonably better details could have been given by the employee, so that his claim could have been ascertained, determined and computed by the Labour Court. This is not certainly a manner in which the application to claim benefits is filed. The employer has opposed the said application mainly on the ground that there was no employer employee relationship between them, and therefore, the Labour Court had no jurisdiction to entertain that application. Apart from refuting the said application, even the employer has not given any better particulars or better details in reply of the said application. Even in the evidence of the employee except saying that he was working as warper for Rs. 4,000/- per month on piece meal basis, no details have been given in his evidence. Even the evidence of the petitioner employer is that of bare denial. On the basis of the aforesaid vague pleadings and vague evidence, the learned labour Court has decided the matter allowing the claim of the employee to the extent of Rs. 28,000/-. The Labour Court has allowed Rs. 4,000/- as notice pay and Rs. 8,000/- as compensation. The Labour Court has also allowed Rs. 16,000/- as bonus. As far as the question of jurisdiction of the Labour Court to entertain the application is concerned, the Labour Court has rightly held that by merely denying the relationship, jurisdiction of the Labour Court u/s 33-C(2) cannot be ousted. As far as the jurisdiction of the Labour Court u/s 33-C(2) of the Industrial Disputes Act is concerned, it has been long back concluded by a Division Bench of this Court in the case of Ramkrishna Ramnath vs. The State of Maharashtra and ors., reported in 1975 Mh.L.J. 212 : 1975 LIC 1561. The Division Bench has considered the entire case law on the point which is raised before me about the employer employee relationship. The Division Bench in its decision has further held that even if the employer questions the employer employee relationship in such proceedings that question being an incidental question can be gone into by the Labour Court. This decision has been followed by the learned Judge of this Court in the case of Ramesh Shamji Thakkar and ors. vs. Chhotelal Mahavir and ors., reported in 1992 (1) Mh.L.J. 773 : 1992(1) CLR 242. It has been specifically held by the learned single Judge that the identification of the employer who has to answer his liability has always been held within the jurisdiction of the Labour Court trying an application u/s 33C of the Act. The learned Judge has also referred to the

aforesaid judgment of the division bench (supra) and also judgments of other High Courts. It was, however, pointed out by the learned Counsel for the petitioner employer that the learned Single Judge (Dr. B.P. Saraf, J) in the case of Jagannath Bhagwandas Shrivastav and ors. vs. Harish Thadani and another, reported in 1994(1) CLR 277, has taken a view that where there is a controversy in regard to very fact where the person concerned was in employment or not, the question of computing the relief's will not arise u/s 33-C(2) of the Act. It appears that the attention of the learned Single Judge was not drawn to the aforesaid two judgments of this Court. The judgment of the Division Bench in the case supra is certainly binding on learned Single Judge, of this Court. According to me, the judgment of the learned Single Judge (Dr. B. P. Saraf) is given per incuriam as the attention of the learned Judge appears not to have been drawn, to the said judgment of the Division Bench as also to the earlier judgment of the learned Single Judge. Since the question of relationship being incidental question, can always be gone into by the Labour Court u/s 33-C(2) of the Act. I find no fault or error with the findings recorded by the Labour Court in respect of his jurisdiction and I hold that the Labour Court has jurisdiction to decide as an incidental question, the issue of employer employee relationship between the parties u/s 33-C(2) of the Act.

2. It was specifically stressed by Shri Pakale, the learned Advocate for the petitioner that the question of employer employee relationship cannot be decided u/s 33-C(2) of the Act as an incidental question, though a question where the applicant is a workman or not as defined u/s 2(s) of the Act can be decided as an incidental question but not a question of master and servant relationship does exist or not. This issue has been specifically answered by the Division Bench in the case (supra) and as has been held by the learned Single Judge in the case (supra) even in such proceedings the employer can be identified. I am in respectful agreement with the said view taken by the learned Single Judge. There is, therefore, no substance in the point raised by the petitioner in respect of the jurisdiction.

3. While computing the benefits the Labour Court has granted Rs. 4,000/- as notice pay and Rs. 8000/- as compensation u/s 25FF of the Act. So far as these two claims are concerned, I do not find any illegality in the same. The employee was employed as a warper for a sum of Rs. 4,000/- per month. This fact has been accepted by the Labour Court and I do not find anything wrong to disagree with the said fact. The Labour Court has awarded Rs. 8,000/- as closure compensation u/s 25FF of the Act and has computed the amount on the basis of section 25F of the Act i.e. 15 days wages per year of service. According to me, there is no error in awarding and computing the said amount as closure compensation.

4. I, however, do not find any basis for awarding bonus to the employee to the tune of Rs. 16,000/-. There is no finding or discussion in respect of applicability of Bonus Act to the employer. The Labour Court has merely calculated the annual

wages of the employee and has computed the amount of bonus for 4 years. The Labour Court could not have determined the amount of bonus in this manner. Similarly, the Labour Court has rightly rejected the claim of overtime wages and leave wages being baseless. In my opinion, the employee is also not entitled to get bonus as he has not proved his claim under the payment of Bonus Act. The employee is therefore, entitled to only a sum of Rs. 12,000/- being notice period and compensation. The petition is therefore partly allowed and the rule is partly made absolute. The impugned judgment is quashed and set aside to the extent of award of bonus to the employee.