

(2008) 01 BOM CK 0062

In the Bombay High Court

Case No : Writ Petition No. 4464 of 1995

Malegaon Nagar Palika

APPELLANT

Vs

Vasant Nathu Kale and Others

RESPONDENT

Date of Decision : 23-01-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes (Bombay) Rules, 1957 — Rule 67A
Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (2008) 3 ALLMR 334 : (2008) 2 BomCR 750 : (2008) 117 FLR 158 :
(2008) 4 MhLj 318

Hon'ble Judges : B.H. Marlapalle, J

Bench : Single Bench

Advocate : A.V. Bukhari and B.V. Bukhari, for the Appellant; Subhangi Borade, instructed by y., Seema Sarnaik, for respondent Nos. 2, 14, 35, 41 to 44, 46, 48 to 53, 76, 85, 90, 92 and 93, for the Respondent

Final Decision : Allowed

Judgement

B.H. Marlapalle, J.—126 daily rated casuals appointed by the petitioner - Municipal Council had approached the Labour Court at Nasik by filing individual applications registered as Application (IDA) Nos. 483 to 608 of 1985 u/s 33C(2) of the Industrial Disputes Act, 1947 (for short the Act) and all these applications have been allowed by the impugned common judgment and order dated 31/12/1994. The applications were made on two grounds, namely, (i) the applicants were performing the same work as assigned to and discharged by the regular employees of the Municipal Council and, therefore, on the basis of "equal pay for equal work" they were entitled for the same monetary benefits as were applicable to the regular employees in the respective grades/jobs and (ii) that the Bhole Pay Commission recommendations as well as the award passed by the Industrial Tribunal in Reference (IT) No.31 of 1983 on 29/3/1984 and published by the State Government in its Gazette dated 15/11/1984 as well as the Part II Award published by the State Government in its Gazette dated 28/6/1987 was

applicable to them. The Labour Court in the impugned award has accepted both the grounds and directed the payment of difference in salaries/wages but has denied separate payment for leave, holidays and weekly off etc.

2. The applications were opposed by the Municipal Council by filing Written Statement in each case. Initially it was contended that the applications were not maintainable as the claim for monetary benefits was not based on the existing rights or privileges and while dealing with the applications on merits it was submitted that the nature of work of the applicants was not similar to that of the permanent employees, the applicants were casual labourers and engaged as and when required and they were not covered by the awards passed by the Industrial Tribunal in Reference (IT) No.31 of 1983. So also they were not covered by the Bhole Pay Commission recommendations. The Municipal Council also pointed out that unless the claim was adjudicated upon regarding "equal pay for equal work" and the nature of duties performed by the applicants, the applications could not be entertained. At Exh.23 the Municipal Council specifically prayed before the Labour Court to frame preliminary issue regarding the maintainability of the applications. The applicants had also filed an application at Exh.16 and prayed for appointment of the Commissioner so as to call for additional information under Rule 67-A of the Industrial Disputes (Bombay) Rules 1957 or for computing the money value of the benefits of the applicants. This application was allowed by the Labour Court by its order dated 17/3/1993. The Commissioner submitted his report at Exh.18 along with the charts at Exh.21. In the said report he gave the year of joining and not the date of joining of each of the applicants and the calculations of the wages on the basis of the award passed in Reference (IT) No. 31 of 1983. These details have been accepted by the Labour Court inspite of the opposition placed on record by the Municipal Council at Exh.19 by which the Council specifically pointed out that the Commissioner acted without jurisdiction and the court could not have appointed a Commissioner to collect evidence so as to decide the main issue of existing rights which were, in fact, required to be adjudicated upon earlier. On the issue of nature of work and the pre-existing right, the Labour Court held in favour of the applicants on the basis of the following reasoning:

12...Therefore, the contentions of the Applicants that they are Class IV employees of the Opponent Council and doing the similar type of work which the permanent employees of the Opponent council are doing is required to be accepted and, therefore, they are entitled to receive the minimum wages in the scale of IV permanent or regular employees of the Opponent Council and I hold that this is their existing right and, therefore, no adjudication is required to decide as stated by the opponent. Considering the ratio laid down by the Hon''ble Supreme Court in Delhi Municipal Karmachari Ekta Union v. P.L. Singh and Ors. 1989 (2) L. IC 1193 and the rulings of the Hon''ble Delhi High Court in the case of Municipal Corporation of Delhi v. Ganesh Razak and Anr. 1994 (I) CLR 370 wherein several rulings of the Hon''ble Supreme Court and the Hon''ble High Courts are referred and considering the other rulings of the Hon''ble Supreme

Court and High Courts relied upon by the learned representative for the applicants which are referred in the written arguments at Exh.22, I am of the opinion that the applicants have existing right to claim the difference of wages paid to them and the actual minimum wages payable to the regular or permanent Class IV employees of the Opponent Council and I further hold that this Court has jurisdiction to compute the amount due to the applicants from the Opponent Council.

On the issue of computation, the Labour Court set out the following reasons:

16...Therefore, I hold that the applicants are entitled to receive the difference of minimum wages in scale of basic wages of Rs.200/-+ D.A., H.R.A. etc. from 1/4/1976 to 31/3/1980 and the minimum wages of Rs.250/ p.m. + D.A., H.R.A. etc. from 1/4/1980 to 30/6/1985 as shown in the statement submitted by the Commissioner vide Exh.No.21, as the minimum basic wages to Class IV permanent/regular employees of the opponent were Rs.200/-int he pay scale of Rs.200-3-230-5-250-EB-280 from 1/4/1976 to 31/3/1980 and the same minimum basic wages were Rs.250/-p.m. in the payscale of Rs.250-8-330-12-450 w.e.f. 1/4/1980, in view of applicability of Bhole Pay Commissioner and the Award of the Hon. Industrial Tribunal, Nasik in Ref. (IT) No.31 of 1983.

3. Mr. Bukhari the learned Counsel for the Municipal Council submitted that the Labour Court committed a gross error in entertaining the applications which were nothing short of execution proceedings and for the same it was necessary that the rights of the applicants to receive the said benefits were already determined either by a competent court or by way of settlement or by way of a Government resolution. When the Council filed Written Statement and disputed the claim made by the applicants and more particularly on the ground that they were not covered by the Bhole Pay Commission recommendations as well as the award passed in Reference (IT) No. 31 of 1983 it was not permissible for the Labour Court to entertain applications and allow the same. As per Mr. Bukhari unless the rights to receive wages/salaries on par with the regular employees on the doctrine of "equal pay for equal work" was adjudicated upon by a competent forum, the Labour Court could not have, as an ancillary issue, decided the said issue by the impugned judgment. In support of these contentions Mr. Bukhari has placed reliance on the decision of this Court (DB) in the case of Yadunathsing Gendasingh Rathor v. Tirora Municipal Council and Ors. 1977 Mh.L.J. 556 and the following decisions of the Apex Court: (a) Municipal Corporation of Delhi Vs. Ganesh Razak and Another, . (b) State of Madhya Pradesh and Others Vs. Yogesh Chandra Dubey and Others, . (c) Marathwada Agricultural University and Others Vs. Marathwada Krishi Vidyapith, M.S.K.S. and Others, .

4. On the other hand the learned Counsel for the respondents vehemently supported the impugned award and submitted that the Commissioner's report at Exhs.18 and 21 clearly went to show that each of the applicants was working anywhere from 2 to 10 years or more and the Bhole Pay Commission

recommendations were made applicable to the employees of the Municipal Council as well as by the State Government by issuing a GR. She also submitted that the Maharashtra Civil Service Rules were equally applicable to the employees of the Municipal Council.

5. All these arguments on behalf of the claimants are solely based on the presumption that the applicants were either the regular or deemed regular employees of the Municipal Council. The Municipal Council in his Written Statement had clearly stated that none of the applicants were recruited by following the normal prescribed mode of selection, they were engaged as daily rated casuals depending upon the exigency of work and they were not regular employees of the Council. In these circumstances, there was no material before the Labour Court to record a finding that the applicants were regular employees of the Council or they were on par with the regular employees. This is a grossly erroneous finding and that too without any evidence. In fact, in the applications filed by the claimants they themselves did not claim that they were regular employees of the Municipal Council or that they had attained the status of deemed regular employees (Class IV).

6. Amongst the decisions cited by the learned Counsel for the applicants, the Labour Court relied upon the decision of the Delhi High Court in the case of *Municipal Corporation of Delhi v. Ganesh Razak and Anr.* (Supra) and obviously the same decision has been overruled by the Apex Court in the same case. In fact, the present applicants' case was almost on the same lines as the case of *Ganesh Razak and Anr.* against the Municipal Corporation of Delhi. Applications u/s 33C(2) of the Act were made on the basis that they were doing the same kind of work as the regular employees and as such they were entitled to same pay as that of regular employees and the regular employees were being paid as per the award passed by the Labour Court and, therefore, they were also entitled for the benefits under the same award. The applications were allowed by the Labour Court and challenge to the same in writ petition before the High Court was unsuccessful. Before the Supreme Court the Corporation challenged the maintainability of the claims u/s 33C(2) of the Act on the ground that the claim made was not a pre-existing right and there was no earlier adjudication by any forum of the claim of the applicants for their entitlement to be paid wages at the same rate at which the regular employees of the establishment were being paid and there was no award or settlement to that effect. The Supreme Court, therefore, framed a question as to whether in these circumstances, without a prior adjudication or recognition of the disputed claim of the workmen to be paid at the same rate as the regular employees, proceedings for computation of the arrears of wages claimed by them on that basis were maintainable u/s 33C(2) of the Act? The Apex Court answered the issue against the claimants and held that the application was not maintainable. By referring to its earlier decisions, the Supreme Court held that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not

incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding u/s 33C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power u/s 33C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power u/s 33C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution.

7. Coming to the issue of the principle of equal pay for equal work to be made applicable to the daily rated labourers, a similar issue was decided by the Division Bench of this Court in the case of Marathwada Kirshi Vidyapith, M.S.K.S. and Ors. v. Marathwada Agricultural University and Ors. [unreported]. The union representing the employees had approached the High Court in a writ petition under Article 226 of the Constitution and prayed for a writ of mandamus for payment of wages at the minimum of the payscale as applicable to the regular employees (in Class IV) on the basis that the casual workers were doing the same work which was being done by the regular employees. This Court had allowed the prayer by holding that denial of the appropriate wages to the daily rated workers amounted to exploitation of labour and, therefore, it was directed that the daily rated workers were to be paid wages with effect from 1/5/1988 at the rate of basic pay i.e. at the minimum of the pay scale (Class IV) plus dearness allowance divided by 26. In the case of Marathwada Agricultural University v. Marathwada Krishi Vidyapith, M.S.K.S. and Ors. (Supra), the Apex Court did not agree with the view taken by this Court and on the contrary it directed the State Government to constitute a Committee so as to formulate a scheme relating to the amount to be paid to the casual workmen and whether there was any necessity for parity of the wages, taking into account the norms relating to the method of requirement, the seasonal nature of employment, if any.

8. So far as the Commissioner's report at Exh.18 in the instant case is concerned, it does not state the number of days worked in every year by the respective applicants. It mentions only the year of joining and the daily rates prevailing from time to time. If somebody claimed that he had joined in 1981 it was not necessary that he/she worked for the whole year or was offered employment during the whole year. The Labour Court noted that the Council failed to submit before it the documentary record regarding the number of days worked and, therefore, the court Commissioner's report was to be accepted. In any case, the Labour Court had no jurisdiction to adjudicate upon the issue of equal pay for equal work while deciding the applications u/s 33C(2) of the Act as it was not an issue incidental to the applications for recovery of arrears of wages. There was also no evidence before the Labour Court to hold that the Bhole Pay Commission recommendations were applicable to the casual labourers like the applicants engaged by the Municipal Council. The awards passed in Reference (IT) No.31 of 1983 did not indicate that they were made applicable to the casual

labourers. The Labour Court went on the other extreme and held that the said awards do not specifically provide that casual labourers were exempted and, therefore, the applicants were covered by the said awards. This approach of the Labour Court is totally erroneous while dealing with an application u/s 33C(2) of the Act.

Recently in the case of Vijay Kumar and Others Vs. Whirlpool of India Ltd. and Others, the Labour Court's power to entertain an application u/s 33C(2) of the Act, the following principles have been summed up:

Whenever receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court u/s 33C(2) of the Act. The benefit sought to be enforced u/s 33C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers u/s 33C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference u/s 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for

9. While admitting this petition the operation of the impugned Judgment and Order was stayed on 20/9/1995 and unconditionally. Mr. Bukhari the learned Counsel for the Municipal Council also stated that most of the applicants subsequently absorbed in the Municipal Council. Taking into consideration all these obtaining circumstances, it would be appropriate that the applications are remanded for a de novo enquiry and by framing the following issues:

- (a) Whether the Bhole Pay Commission recommendations were made applicable to the casual labourers in the Municipal Council per se?
- (b) Whether the applicants were covered by the awards in Reference (IT) No.31

of 1983?. These issues can be adjudicated upon as ancillary issues by providing opportunity to both the sides to adduce evidence both oral as well as documentary and, in fact, the claim of the applicants on the Bhole Pay Commission recommendations as well as the awards passed in Reference (IT) No.31 of 1983, it shall be necessary for the Municipal Council to place on record before the Labour Court the number of working day of each of the applicants in every year of service till 30/6/1985.

10. In the premises this petition succeeds and the same is hereby allowed. The impugned Judgment and Order dated 31/12/1994 is hereby quashed and set aside. The applications registered as Application (IDA) Nos. 483 to 608 of 1985 are remanded for fresh enquiry by the Labour Court at Nasik by framing the above mentioned two issues and on the basis the evidence the parties will adduce. The de novo enquiry be completed as expeditiously as possible and preferably before 31/12/2008. R and P be returned to the Labour Court forthwith.